ACTS, RESOLUTIONS AND MEMORIALS,

OF THE

TERRITORY OF MONTANA,

PASSED BY THE

FIRST LEGISLATIVE ASSEMBLY.

CONVENED AT BANNACK, DECEMBER 12, 1864.

VIRGINIA CITY, MONTANA:
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PREFACE.

The undersigned, in the supervision of the publication of the Laws of Montana Territory, under the authority given him by Hon. Thomas Francis Meagher, Secretary of the Territory, in compliance with "An Act relating to the Printing of the Laws and Journals of the Council and House of Representatives of the First Legislative Assembly of the Territory of Montana," approved January 31, 1865, has not considered himself at liberty to go beyond the strict letter of the law, which authorizes corrections of only the slight and evident errors in spelling and punctuation; believing it his duty to attempt no correction of *verbal* errors, even where the intention of the Legislature was most manifest, but rather leaving the construction of all such portions to the decisions of the courts. For the same reason, he has not deemed himself authorized to change in any manner the numbering of the chapters in the Civil Practice Act, though a re-arrangement of them would seem to be urgently needed.

The undersigned has constantly endeavored to make the indexes to the Civil and Criminal Practice Acts as full and minute as possible, particularizing each section in such manner as to facilitate to the utmost the reference to every portion; and has also striven to index with all necessary completeness and particularity all other Acts of a public character according to their subject matter; while those laws of a more private nature and less general interest have been collected in the index in one body under the head of "Private Laws."

EDW. B. NEALLEY.

MAY, 1866.

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DECLARATION OF INDEPENDENCE,

PASSED JULY 4, 1776.

A Declaration by the Representatives of the United States of America, in Congress assembled.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of

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repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasion on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the mean time, exposed to all the danger of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose, obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction

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foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of troops among us:

For protecting them, by a mock trial, from punishment, for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally, the powers of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction, of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren.

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We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in general Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

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CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and including Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each

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state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro-tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

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Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. Each house shall be the judge of elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which

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he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

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To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested

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by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time..

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States;

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and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows: —

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[* The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a ma-

* Annulled. See 12th Amendment.

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jority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation: —

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

SECTION 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have the power to

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grant reprieves and pardons for offences agains the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United

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States, and treaties made, or which shall be made, under their authority;— to all cases affecting ambassadors, other public ministers, and consuls;— to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more states; — [* between a state and citizens of another state; —] between citizens of different states; — between citizens of the same state claiming lands under grants of difierent states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during thr life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other

* Annulled. See 11th Amendment.

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crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article;

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and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

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AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand

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jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

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ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators,

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and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

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ORGANIC ACT

OF THE

TERRITORY OF MONTANA.

AN ACT to provide a temporary government for the Territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the limits, to wit: commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky mountains; thence following the crest of the Rocky mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of said Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is, hereby created into a temporary government by the name of the Territory of Montana: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory or changing its boundaries in such manner and at such time as Congress shall deem convenient and proper, or

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from attaching any portion of said Territory to any other State or Territory of the United States: *Provided, further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Montana, until said tribe shall signify their assent to the President of the United States to be included within said Territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over said Territory of Montana shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside within said Territory, and shall be commander-in-chief of the militia and superintendent of Indian affairs thereof. He may grant pardons and respites for offences against the laws of said Territory, and reprieve for offences against the laws of the United States, until the decision of the President of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence

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semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation, or absence of the governor from the Territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said Territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members, having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of thirteen members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and representatives, giving to each section of the Territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county or counties for which they may be elected respectively. Previous to the first election the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled

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under this act. The persons having the highest number of legal votes in each of the said council districts, respectively, for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives in each of said representative districts, respectively, shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 5. *And be it further enacted*, That all citizens of the United States, and those who have declared their intentions to become such, and who are otherwise described and qualified under the fifth section of the act of Congress providing for a temporary government for the Territory of Idaho, approved March third, eighteen hundred and sixty-three, shall be entitled to vote at said first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

SEC. 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said Territory shall, before it be-

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comes a law, be presented to the governor of the Territory. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return; in which case it shall not be a law: *Provided*, That whereas slavery is prohibited in said Territory by act of Congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the Territory of Montana. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly. And no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said Territory.

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SEC. 9. *And be it further enacted*, That the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or the justices thereof, shall appoint its own clerk; and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge

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thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeal in all such cases shall be made to the supreme court of said Territory the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington Territory now receive for similar services.

SEC. 10. *And be it further enacted*, That there shall be appointed an attorney for said Territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Washington. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services. There shall also be appointed by the President of the United States, by and with the advice and consent of the Senate, a surveyor general for said Territory, who shall locate his office at such place as the Secretary of the Interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor general of New Mexico, under the direction of the Secretary of the Interior, and such instructions as he may from time to time deem it advisable to give.

SEC. 11. *And be it further enacted*, That the governor, secre-

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tary, chief justice, and associate justices, attorney, and marshal shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively, take an oath or affirmation before the district judge, or some justice of the peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall be taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said governor, or secretary, or some judge or justice of the peace of the Territory who may be duly commissioned or qualified, or before the chief justice or some associate justice of the Supreme Court of the United States, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. And any person who has heretofore been appointed chief justice or associate justice of the Territory of Idaho, who has not yet taken the oath of office, as prescribed by the act organizing said Territory, may take said oath or affirmation before the chief justice or some associate justice of the Supreme Court of the United States. The governor shall receive an anunal salary of two thousand five hundred dollars; the chief justice and associate justice shall receive an annual salary of two thousand five hundred dollars; the secretary shall receive an annual salary of two thousand dollars The said salaries shall be paid quarter yearly from the dates of the respective appointments at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each per day during their attendance at the sessions thereof, and four dollars each for every twenty

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miles' travel in going to and returning from said sessions, estimated according to the nearest usually travelled route; and an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms and doorkeeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the other officers three dollars per day during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum, to be expended by the governor, to defray the contingent expenses of the Territory, including the salary of the clerk of the executive department. And there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses. And the governor and secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall semi-annually account to the said Secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of Congress making appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. *And be it further enacted*, That the legislative assembly of the Territory of Montana shall hold its first session at such time and place in said Territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible: *Provided*, That the seat of government fixed by the governor and legislative assembly shall not be at any time changed except by an act of the said assembly, duly passed, and which shall be approved, after due

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notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

SEC. 13. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives; but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections the time and places, and manner of holding the elections, shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said Territory of Montana as elsewhere within the United States.

SEC. 14. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory and in the States and Territories hereafter to be erected out of the same.

SEC. 15. *And be it further enacted*, That, until otherwise provided by law, the governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

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SEC. 16. *And be it further enacted*, That all officers to be appointed by the President of the United States, by and with the advice and consent of the Senate, for the Territory of Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

SEC. 17. *And be it further enacted*, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the Territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued, with the same powers and duties which are now prescribed by law, except that the President of the United States may, at his discretion, change the location of the office of said agencies or superintendents.

SEC. 18. *And be it further enacted*, That, until Congress shall otherwise direct, all that part of the Territory of Idaho included within the following boundaries, to wit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty-third degree of longitude to the crest of the Rocky mountains; thence northward along the said crest of the Rocky mountains to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence eastward along said forty-fourth degree thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree north latitude; thence eastward along said forty-fifth degree of north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington to the forty-first degree north latitude; thence west along said forty-first degree of latitude to the place of beginning, shall be, and is hereby, incorporated temporarily into and made part of the Territory of Dakota.

Approved May 26, 1864.

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THE HOMESTEAD LAW.

AN ACT to secure Homesteads to actual settlers on the Public Domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a pre-emption claim, or which may at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents, or less, per acre, or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: *Provided*, That any person owning and residing on land may, under the provisions of this act, enter other lands lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SEC. 2. *And be it further enacted*, That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the government of the United States, or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and

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not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: *Provided, however*, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry; or, if he be dead, his widow; or, in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death; shall prove by two credible witnesses that he, she or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the government of the United States; then, in such case, he, she or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: *And provided further*, That in cases of the death of both father and mother, leaving an infant child, or children under twenty-one years of age, the right and fee shall enure to the benefit of said infant child or children; and the executor, administrator or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the state in which such children for the time being have their domicil, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

SEC. 3. *And be it further enacted*, That the register of the land office shall note all such applications on the tract books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

SEC. 4. *And be it further enacted*, That no lands acquired under the provisions of this act shall, in any event, become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

SEC. 5. *And be it further enacted*, That if, at any time after

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the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then, and in that event the land so entered shall revert to the government.

SEC. 6. *And be it further enacted*, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one-half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: *Provided*, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing pre-emption rights: *And provided further*, That all persons who may have filed their applications for a pre-emption right prior to the passage of this act, shall be entitled to all privileges of this act: *Provided further*, That no person who has served, or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years.

SEC. 7. *And be it further enacted*, That the fifth section of the act entitled "An act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purpose," approved the third of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations and affidavits required or authorized by this act.

SEC. 8. *And be it further enacted*, That nothing in this act

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shall be so construed as to prevent any person who has availed him or herself of the benefit of the first section of this act, from paying the minimum price, or the price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtaining a patent therefor from the government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting pre-emption rights.

Approved May 20, 1862.

AMENDMENT TO THE HOMESTEAD LAW.

AN ACT amendatory of the homestead law, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of any person desirous of availing himself of the benefits of the homestead act of twentieth of May, eighteen hundred and sixty-two, but who, by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land office which the said act of twentieth May, eighteen hundred and sixty-two, requires, and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a bona fide improvement and settlement have been made, it shall and may be lawful for such person to make the affidavit required by said act before the officer commanding in the branch of the service in which the party may be engaged, which affidavit shall be as binding in law, and with like penalties, as if taken before the register or receiver; and upon such affidavit being filed with the register by the wife or other representative of the party, the same shall become effective from the date of such filing, provided the said application and affidavit are accompanied by the fee and commissions, as required by law.

SEC. 2. *And be it further enacted*, That, besides the ten dollar fee exacted by the said act, the homestead applicant shall hereafter pay to the register and receiver each, as commissions, at the

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time of entry, one per centum upon the cash price as fixed by law of the land applied for, and like commissions when the claim is finally established and the certificate therefor issued as the basis of a patent.

SEC. 3. *And be it further enacted*, That in any case hereafter in which the applicant for the benefit of the homestead, and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a bona fide improvement and settlement have been made, is prevented, by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land office, it shall and may be lawful for him to make the affidavit required by the original statute before the clerk of the court for the county in which the applicant is an actual resident, and to transmit the same, with the fee and commissions, to the register and receiver.

SEC. 4. *And be it further enacted*, That in lieu of the fee allowed by the twelfth section of the pre-emption act of fourth September, eighteen hundred and forty-one, the register and receiver shall each be entitled to one dollar for their services in acting upon pre-emption claims, and shall be allowed, jointly, at the rate of fifteen cents per hundred words for the testimony which may be reduced by them to writing for claimants, in establishing pre-emption or homestead rights, the regulations for giving proper effect to the provisions of this act to be prescribed by the Commissioner of the General Land Office.

SEC. 5. *And be it further enacted*, That where a pre-emptor has taken the initiatory steps required by existing laws in regard to actual settlement, and is called away from such settlement by being actually engaged in the military or naval service of the United States, and by reason of such absence is unable to appear at the district land office to make, before the register or receiver, the affidavits required by the thirteenth section of the pre-emption act of fourth September, eighteen hundred and forty-one, the time for filing such affidavit and making final proof and entry of location shall be extended six months after the expiration of his term of service, upon satisfactory proof by affidavit, or the testimony of witnesses, that the said pre-emptor is so in the service, being filed with the register of the land office for the district in which his settlement is made.

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SEC. 6. *And be it further enacted*, That the registers and receivers in the State of California, in the State of Oregon, and in the Territories of Washington, Nevada, Colorado, Idaho, New Mexico, and Arizona, shall be entitled to collect and receive, in addition to the fees and allowances provided by this act, fifty per centum of said fees and allowances as compensation for their services: *Provided*, That the salary and fees allowed any register or receiver shall not exceed in the aggregate the sum of three thousand dollars per annum.

Approved March 21, 1864.

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PRE-EMPTION LAW.

AN ACT to appropriate the proceeds of the sales of public lands and to grant pre-emption rights.

* * * * * *

SEC. 10. *And be it further enacted*, That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen, as required by the naturalization laws, who since the first day of June, A. D. eighteen hundred and forty, has made or shall hereafter make a settlement in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit or improve the same, and who has or shall erect a dwelling thereon, shall be and is hereby, authorized to enter with the register of the land office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land; *subject*, *however*, to the following limitations and exceptions: No person shall be entitled to more than one pre-emptive right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory, shall acquire any right of pre-emption under this act; no lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or

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other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing-rabbit creek, &c., be, and the same is hereby, repealed: *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

SEC. 11. *And be it further enacted*, That when two or more persons shall have settled on the same quarter section of land, the right of pre-emption shall be in him or her who made the first settlement, *provided* such person shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers, shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to and a revision by the Secretary of the Treasury of the United States.

SEC. 12. *And be it further enacted*, That prior to any entries being made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers, of the right hereby secured, prior to the issuing of the patent, shall be null and void.

SEC. 13. *And be it further enacted*, That before any person claiming the benefit of this act shall be allowed to enter such lands,

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he or she shall make oath before the receiver or register of the land district in which the land is situated, (who are hereby authorized to administer the same,) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made any agreement or contract, in any way or manner with any person or persons whatsoever, by which the title which he or she might acquire from the Government of the United States, should enure in whole or in part to the benefit of any person except himself or herself, and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of bona fide purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such an oath was administered according to law.

SEC. 14. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been or may be appointed by the proclamation of the President, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required before the day appointed for the commencement of the sales as aforesaid.

SEC. 15. *And be it further enacted*, That whenever any person has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall in the first case, within three months of the passage of the same, and in the last within thirty days next after the date of such settlement, file with the register of the proper district a written statement, describing the land settled upon, and declaring the intention of such

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person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

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Approved September 4, 1841.

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STATUTES

OF THE

TERRITORY OF MONTANA.

TITLE I.

AN ACT to regulate proceedings in civil cases in the courts of justice of the Territory of Montana.

CHAPTER I.

THE FORM OF CIVIL ACTIONS, AND THE PARTIES THERETO.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. There shall be in this Territory but one form of civil action, which shall be the same at law and in equity.

SEC. 2. In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

SEC. 3. When a question of fact not put in issue by the pleadings is to be tried by the jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried, and such order shall be the only authority necessary for a trial.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act; but in suits brought by the assignee of a chose in action, account, or unliquidated demand, not assigned in writing, the assignor shall be made a party defendant, to answer as to his interest in the subject

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matter of the action, but in such action, if the assignor [desires] (denies) having any interest in the action, no costs shall be awarded against him, and a [defendant] (default) shall be deemed a denial.

SEC. 5. In case of an assignment of a thing in action, the action by the assignee shall be without any prejudice to a set off or other defence existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith and upon good consideration, before due.

SEC. 6. An executor or administrator, trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted.

SEC. 7. When a married woman is a party, her husband shall be joined with her, except when the action concerns her separate property, she may sue alone; when the action is between her and her husband, she may sue or be sued alone.

SEC. 8. If a husband and wife are sued together, the wife may defend for her own right.

SEC. 9. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a probate judge.

SEC. 10. The guardian shall be appointed as follows: First, when the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under [the] (that) age, upon the application of a relative or friend of the infant. Second, when the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen (years), or neglect so to apply, then upon the application of a relative or friend of the infant, or any other party to the action.

SEC. 11. A father, or in case of his death or desertion of his family, the mother may maintain an action for the injury or death of a minor child; and a guardian for the injury of a ward; and an administrator for the death of a dece[n]dent.

SEC. 12. All persons having an interest in the subject of the action, and obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this act.

SEC. 13. Any person may be made a defendant who has, or

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claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant; the reason thereof being stated in the complaint; and when the question is one of common or general interest of many persons, or when the parties are numerous, and it is impract(ic)able to bring them all into court, one or more may sue or defend for the benefit of all.

SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

SEC. 16. An action shall not abate by the death or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or other disability of a party, the court on motion may allow the action to be continued, by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

SEC. 17. The court may determine any controversy before it between the parties, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in. In all suits now pending in any court of record, or which may hereafter be brought, under this act, when it shall be necessary to make new parties or bring other parties into court, the plaintiff may in vacation, file in the office of the clerk of the court where the same is pending, a supplementary petition, setting forth their interest, and praying that they may be made parties to said suit; upon which supplemental petition, it shall be the duty of the clerk to issue a summons to said person, which summons shall be issued and served as in other cases, and the said parties so summoned shall an-

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swer or demur as in other cases, and the cause shall be proceeded with as if they had originally been parties to the suit.

TITLE II.

Place of Trial of Civil Actions.

Sec. 18. Actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof is situated, subject to the power of the court to change the place of trial as provided in this act: First, for the recovery of real property or mining claims, or of an estate or interest therein, or for the determination in any form of such right or interest, or for injuries to real property: Second, for the partition of real property: Third, for the foreclosure of a mortgage of real property.

Sec. 19. Actions for the following causes shall be tried in the county where the causes, or some part thereof arose; subject to (the) like [like] power of the court to change the place of trial: First, for the recovery of a penalty or forfeiture imposed by statute, except, that where it is imposed for an offence committed on a lake, river or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or other stream, and opposite to the place where the offence was committed: Second, against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or his aid, does anything touching the duties of such officer.

Sec. 20. In all other cases, the action shall be tried in the county in which the parties, or some of them, resided at the commencement of the action; or, if none of the parties reside in the Territory, the same may be tried in any county which the plaintiff may designate in his complaint, subject, however, to the power of the court to change the place of trial as provided in this act.

Sec. 21. The court may, on motion, change the place of trial in the following cases: First, when the county designated in the complaint is not the proper county: Second, when there is reason to believe that an impartial (trial) cannot be had therein: Third, when the convenience of witnesses and the ends of justice would be promoted by the change: Fourth, when, from any cause, the judge is disqualified from acting in the action.

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TITLE III.

MANNER OF COMMENCING CIVIL ACTIONS.

SEC. 22. Civil actions in the district and probate courts shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, and the issuing of a summons thereon, *Provided*, that after the filing of the complaint, a defendant in the action may appear, answer or demur, whether the summons has been issued or not, and such appearance, answer or demur(r)er shall be deemed a waiver of summons.

SEC. 23. The clerk shall indorse on the complaint the day, month and year the same is filed, and at any time within one year after the filing of the same, the plaintiff may cause to be issued a summons thereon. The summons shall be issued and signed by the clerk, under the seal of the court, and directed to the defendant.

SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, and, if the action is brought for money, the amount demanded by the plaintiff; and shall require the defendant to appear and answer the complaint on the return day of the summons; and the clerk shall also indorse on the summons the names of the plaintiff's attorneys.

SEC. 25. The summons shall be returnable on the first day of the next term after it is issued, if the defendant resides in the county in which the action is pending, and the summons was issued ten days before the commencement of such term; or, if the defendant resides out of the county in which the suit is brought, but in the district, and the summons was issued fifteen days before the first day of the term; but if the defendant resides out of the dis-(trict) in which the action is pending, the summons must (be) issued twenty days before the first day of the term.

SEC. 26. Any defendant served with (a) summons in the county in which the action is pending, ten days before the return day thereof, or any defendant (served) with (a) summons out of the county in which the suit is brought, but in the district, fifteen days before the return day thereof, or any defendant served with (a) summons out of the district, but in the Territory, twenty days

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before the return day thereof, shall be required to appear and answer or demur to the complaint on the return day of the summons, or judgment may be taken by default for the amount due, or the relief sought.

SEC. 27. In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any time afterwards, may file with the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and description of the property in that county affected thereby. From the time of the [time of the] filing, only, shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property effected thereby.

SEC. 28. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or appointed by a judge of the court in which the action is brought. When the summons is served by any other person, as before provided, it shall be returned to the office of such clerk, with the affidavit of such person, of its service.

SEC. 29. The summons shall be served as follows: First, if the suit be against a corporation, by reading the same to the president, or other head of the corporation, secretary, cashier, or managing agent thereof, or by leaving a copy of the same at the office, or other place of business of said corporation, in a conspicuous place: Second, if against a minor under the age of fourteen years, by reading the same to the father, mother, or guardian of the defendant; or, if there be none in the Territory, then to any person having the care, control or custody of such minor, or with whom he resides, or in whose service he is employed; or by leaving a copy thereof at the residence of such father, mother, guardian, or person having the care, control, or custody of such minor; or (of) the person by whom he is employed; or at whose residence such minor resides: Third, if against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by reading the same to such guardian, or by leaving a copy thereof at the dwelling-house, or usual place of abode of such guardian, with some person residing there, or posting the same in a conspicuous place: Fourth, in all other cases, by reading the same to the defendent, personally, or by

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leaving a copy thereof at the dwelling-house, or usual place of abode of such defendant, with some person residing there, or by posting the same in a conspicuous place.

SEC. 30. When the person on whom service is to be made resides out of the Territory, or has departed therefrom, or after due diligence cannot be found within the Territory, or conceals himself to avoid the service of summons, and that fact shall appear by affidavit, the court, or the clerk thereof, in vacation, shall grant an order of publication; the order to notify the non-resident, absent or concealed defendant, of the pendency of the action, stating briefly the general nature thereof, and require [them] (such defendants) to appear and answer the complaint on the return day of the summons, or that the cause will be heard, and determined in their absence.

SEC. 31. The order shall direct the publication to be made in a newspaper published in the county in which the suit is brought, if any there be, if not, then in the paper published nearest thereto, in the Territory. Such publication shall be made at least once a week for four weeks successively, the last of which shall be sixty days before the first day of the term of court at which said suit will be heard. When the publication is ordered, personal service of the summons out of the Territory, sixty days before the first day of the term a which the suit is heard, shall be equivalent to publication.

SEC. 32. Whe(n) the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First, If the action be against the defendants jointly indebted on contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only, that it may be enforced against the joint property of all, and the separate property of the defendant served; or, Second, If the action be against defendants severally liable, he may proceed against the defendants served, as if they were the only defendants.

SEC. 33. In the case of publication, the affidavit of the printer, or his foreman, or principal clerk, or other person having personal knowledge of the same, shall be filed, showing such publication. And in case of personal service out of the Territory, the affidavit

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of the person serving the summons shall be filed showing such service.

SEC. 34. A written acknowledgment of the defendant, on the summons, of its service, shall be equivalent to service of the same, on proof by affidavit being made to the court, that the signature of the defendant or defendants to such acknowledgment of service is genuine.

SEC. 35. From the time of the service of the summons, or the voluntary appearance of the defendant, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings.

TITLE IV.

PLEADINGS.

SEC. 36. The pleadings are the formal allegations of the parties of their respective claims and defences for the judgment of the court.

SEC. 37. All the forms of pleadings in civil actions, and [and] the rules by which the suffice(i)n(c)y of the pleadings shall be determined, shall be those prescribed in this act.

SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint, demur(r)er, or reply to the defendant's answer; and the only pleadings on the part of the defendant shall be a demur(r)er to the complaint, or a demur(r)er to the reply, or an answer to the complaint. The demur(r)er or answer of the defendant, and the demur(r)er or reply of the plaintiff, shall be filed with the clerk.

SEC. 39. The complaint shall contain, First, The title of the action, specifying the name of (the) court and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant. Second, A statement of the facts constituting the cause of action, in ordinary and concise language, and when (the) complaint contains more than one cause of action, each shall be stated in a separate paragraph, and numbered. Third, A demand of the relief which the plaintiff[s] claims, if the recovery of money or damages be demanded, the amount thereof shall be stated.

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SEC. 40. The defendant may demur to the complaint, within the time required to answer, when it appears on the face thereof, either, First, That the court has no jurisdiction of the person of the defendant, or the subject of the action; or, Second, that the plaintiff has not the legal capacity to sue; or, Third, that there is another action pending between the same parties for the same cause; or, Fourth, that there is a defect or misjoinder of parties, plaintiff or defendant; or, Fifth, that several causes of action have been improperly united; or, Sixth, that the complaint does not state facts sufficient to constitute a cause of action; or, Seventh, that the action has not been commenced within the (time) limited by law.

SEC. 41. The demurrer shall specify the cause of demurrer, and each cause shall be separately stated and numbered.

SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue; or may demur and answer at the same time.

SEC. 43. The complaint may be amended at any time before answer, without leave, and after answer, with leave of the court, upon such terms as may be just, and the court may in its discretion require the complaint as amended to be filed, and a copy of the amendment (to be) served upon every defendant affected thereby, or upon his attorney, if he has appeared by attorney; but no amendment of the complaint shall be filed without leave of the court, increasing the demand of the plaintiff in (an) action for the recovery of money. The defendant shall answer such amended complaint in such time as may be ordered by the court, and judgment may be entered by default, upon failure to answer, as in other cases.

SEC. 44. When any of the matters enumerated in section forty do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 45. If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objections to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 46. The answer of the defendant shall contain, First, a specific or general denial of each allegation of the complaint, con-

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troverted by the defendant, but a general denial, shall only put in issue the material and express allegations of the complaint. Second, a statement of any new matter or counter claim constituting a defence, in plain and concise language. When the answer contains new matter constituting a defence, the plaintiff may within the time allowed by the court, reply to such new matter, and if he fail to do so, such new matter shall be taken as true, and deemed proved at the trial. If new matter of set off and counter claim be set up in the answer, the reply may contain matter of set off and counter claim, not embraced in the complaint. All new matter set up in the reply, shall be deemed denied by the defendant.

SEC. 47. The counter-claim mentioned in the last section, shall be one existing in favor of the defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First, a cause of action arising out of the transaction set forth in the complaint or answer, as the foundation of the plaintiff's claims, or the defendant's defence, connected with the subject of action. Second, in an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

SEC. 48. When cross demands have existed between persons, under such circumstances that if one had brought an action against the other, a counter claim could have been set up, neither shall be deprived of the benefit thereof, by the assignment or death of the other, but the two demands shall be deemed compensated, so far as they equal each other.

SEC. 49. The defendant may set forth by answer, as many defences and counter claims as he may have; they shall each be stated in a separate paragraph, and numbered; and shall refer to the cause of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

SEC. 50. When the answer contains new matter, the plaintiff may within the time allowed by the court, demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may also within the same time, demur to one or more of the defences set up in the answer, and the defendant, in like manner, may demur to the plaintiff's reply. Sham and irrelevant answers, replies and defences, and so much of any answer or reply as may be irrelevant, redundant or immaterial, may be stricken out, on

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motion, and upon such terms as the court in its discretion may impose; also, ambiguous, unintelligible and uncertain matter.

SEC. 51. Every pleading shall be subscribed by the party or his attorney.

SEC. 52. When an action is brought upon a written instrument, and the original instrument or a copy thereof is filed with the complaint, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

SEC. 53. When the defence to an action is founded upon a written instrument, and a copy of the same or the original instrument is filed with the answer, the due execution of such instrument shall be deemed admitted, unless the reply denying the same be verified.

SEC. 54. In all cases of the verification of a pleading, the affidavit shall be made by the party, or some one having personal knowledge of the facts. When a corporation is a party, the verification may be made by an officer thereof.

SEC. 55. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party, within a reasonable time after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The court may order a further account when the one delivered is too general, or is defective in any particular.

SEC. 56. If irrelevant or redundant matter be inser(ted) in a pleading, it may be stricken out by the court, on motion of any person aggrieved thereby.

SEC. 57. In an action for the recovery of real property, such property shall be described with its metes and bounds, in the complaint.

SEC. 58. In pleading a judgment, or other determination of court or officer of special jurisdiction, it shall not be necessary to state the facts concerning jurisdiction, but such judgment or determination may be stat(ed) to have been duly given or made. If such allegation be controverted, the party pleading it shall be bound to establish, [in] (on) the trial, the facts concerning the jurisdiction.

SEC. 59. In pleading the performance of conditions, precedent

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in contracts, it shall not be necessary to state the facts showing such performance, but it may be stated, generally, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on trial the facts showing such performance.

SEC. 60. In pleading a private statute, or a right derived therefrom, it shall be sufficient to [to] refer to such statute by its title and the day of its passage; and the court shall thereupon take judicial notice thereof.

SEC. 61. In actions for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial, that it was so published or spoken.

SEC. 62. In actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damage, and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 63. The plaintiff may unite several causes of action in the same complaint when they arise out of, First, contracts express or implied; or Second, claims to recover specific or real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or Third, claims for the recovery of specific personal property, with or without damages for the withholding thereof; or Fourth, claims against a trustee or other person in a judiciary capacity, by virtue of a contract or by operation of law; or Fifth, injuries to character; or Sixth, injuries to person; or Seventh, injuries to property. But the causes of action so united shall all belong to one, only, of these classes; and shall effect all the parties to the action, and not require different places of trial, and shall be separately stated. *Provided, however*, that an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person.

SEC. 64. Every material allegation of the complaint or answer,

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not controverted by the answer or reply, shall, for the purpose of the trial, be taken as true.

SEC. 65. A m[e](a)terial allegation in a pleading, is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it (in)sufficient.

SEC. 66. After demurrer, and before the trial of issue on demurrer, either party may amend any pleading demurred to [and] without costs; filing the same as amended; but a party shall not so amend more than once. When a demurrer to a complaint or answer is overruled, and there is no answer or reply filed, the court may, upon such terms as may be just, allow an answer or reply to be filed. If a demurrer to the replication be overruled, the facts alleged in the reply shall still be considered as [diried] (denied.)

SEC. 67. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleadings or proceedings by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may upon like terms enlarge the time for answer or demurrer, or demurrer to an answer or reply, or reply to an answer filed. The court may, likewise, upon affidavit, showing good cause therefor, after notice to the adverse party, allow upon such terms as may be just, an amendment to any pleading, or proceeding in other particulars; and may, upon like terms, allow an answer to be made after the time allowed by the court; and may, upon such terms as may be just, and upon payment of costs, relieve a (party), or his legal representatives, from a judgment, order, or other proceeding taken against him through his mistake, inadvertance, surprise or excusable neglect. When, from any cause, the summons was not personally served on the defendant, the court may allow, upon such terms as may be just, such defendant, or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

SEC. 68. When the plaintiff is ignorant of the name of a[ny] defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly.

SEC. 69. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

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SEC. 70. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not effect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

TITLE V.

CHAPTER II.

SEC. 71. The plaintiff in an action to recover possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided in this act.

SEC. 72. When the delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing, First, That the plaintiff is the owner of, or entitled to the immediate possession of the property, particularly describing it: Second, That the property is wrongfully detained by the defendant: Third, The actual value thereof: Fourth, That the same has not been taken for a tax, assessment, or fine, pursuant to a statute of this Territory, or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure.

SEC. 73. The plaintiff or his attorney may, thereupon, by indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant.

SEC. 74. Upon the receipt of the affidavit and notice, with a written undertaking executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and deliver it to the plaintiff; except as herein otherwise provided.

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SEC. 75. At any time before the delivery of the property to the plaintiff, the defendant may, if the plaintiff consent thereto, be permitted to retain possession thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, in double the amount of the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of any such sum as may from any cause be recovered against the defendant. If the plaintiff does not consent, the property shall be immediately delivered to him by the sheriff.

SEC. 76. The qualification of sureties shall be as follows: First, Each shall be a resident of the county: Second, When the property claimed is not worth over two thousand dollars, each shall be worth the amount specified in the undertaking, over and above his debts, liabilities, and property by law exempt from execution. When the property claimed exceeds in value two thousand dollars, the officer may take the justification of each one, separately, so that the whole amount equals the amount of the sum specified in the undertaking. In all cases where the officer takes bail, as herein provided, he shall require the sureties to make oath of the facts, showing their qualifications as bail.

SEC. 77. If the property, or any part thereof, be concealed in a building or enclosure, the sheriff shall publicly demand its delivery; if it be not delivered he shall cause the building or enclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of the county.

SEC. 78. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 79. If property taken be claimed by any other person than the defendant or his agent, and such person makes affidavit of his title thereto, or right of possession thereof, stating the grounds of such title or right, and serves the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on the demand of him or his agent, indemnifies the sheriff against such claims, by an undertaking by two sufficient sureties, who shall have the same qualifications, and shall make affidavit thereof, as sureties in other cases herein speci-

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fied, and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made.

SEC. 80. The sheriff shall file the notice, undertaking and affidavit, with his proceedings endorsed thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

SEC 81. Whenever it shall appear to the satisfaction of the court, by affidavit or otherwise, that any bond executed in any of the proceedings herein mentioned, is insufficient, or the sureties thereto have not the qualifications of bail, as herein prescribed, the court may order new bonds to be given within a time limited, and if such bonds be not given within such time, the sheriff shall take and deliver the property to the party that would have been entitled to the possession of the same if no such bond had ever been executed.

TITLE VI.

CHAPTER III.

INJUNCTIONS.

SEC. 82. An injunction is a writ or order, requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought, or by the judge thereof, or by the probate judge; and when made by a judge may be enforced as the order of the court.

SEC. 83. An injunction may be granted in the following cases: First, When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually: Second, When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation, would produce great, irreparable injury to the plaintiff: Third, When it shall appear during the litigation, that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

SEC. 84. The injunction may be granted at the time of issuing

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the summons on the complaint, and at any time afterwards, before judgment, upon affidavit. The complaint in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint, unless it be verified by the oath of the plaintiff, or some one in his behalf, that the person making the oath has read, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matter therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint, and verification attached, shall be served with the injunction; and when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

SEC. 85. An injunction shall not be allowed after the defendant has answered, unless, upon notice, or upon an order to show cause; but in such case, the defendant may be restrained until the decision of the court or judge, granting or refusing the injunction.

SEC. 86. On granting an injunction, the court or judge shall require, except when the people of the Territory are a party plaintiff, with sufficient sureties, to the effect, that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

SEC. 87. If the court or judge deem it proper that the defendant, or any of the several defendants, shall be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

SEC. 88. An injunction to stop the general and ordinary business of a corporation, shall not be granted, except by the court, nor shall it be granted without due notice of the application therefor, to the proper officers of the corporation, except when the people of the Territory are a party to the proceedings.

SEC. 89 If an injunction be granted without notice, the defendant at any time before the trial, may apply, upon reasonable notice to the judge who granted the injunction, or the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint, or the affidavit, on which the injunction was granted, or upon affidavit on the part of

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the defendant, with or without the answer. If the application be made upon affidavit on the part of the defendant, but not otherwise the plaintiff may oppose the same, by affidavits or other evidence, in addition to those on which the injunction was granted.

SEC. 90. If upon such application it satisfactorily appears that there is not sufficient ground for the injunction, it shall be dissolved, or if it appear that the extent of the injunction is too great, it shall be modified.

CHAPTER IV.

GROUNDS OF ATTACHMENT.

SEC. 91. The plaintiff in civil action for the recovery of money, may at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated, and no other; when the debt or contract upon which the attachment is sought was contracted in this or some other Territory of the United States; or upon debts or contracts made out of this Territory, and in some of the States of the United States, and payable in this Territory; or for machinery or other property to be brought to this Territory; or freight upon the same; or for fare or passage money of persons coming to this Territory; First, When the defendant, or one of several defendants, is a foreign corporation or a non-resident of this Territory; or, Second, Has absconded, with intent to defraud his creditors; or, Third, Has left the county of his residence to avoid the service of a summons; or, Fourth, So conceals himself that a summons cannot be served upon him; or, Fifth, Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with intent to defraud his creditors; or, Sixth, Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, Seventh, Has property or rights in action which he conceals; or, Eighth, Has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or, Ninth, Fraudulently contracted the debt or incurred the obligation for which suit is about to be, or has been brought. But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resi-

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dent of this Territory for any claim other than a debt or demand arising upon contract, judgment or decree.

SEC. 92. An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing, First, The nature of the plaintiff's claims; Second, That it is just; Third, The amount which the affiant believes the plaintiff ought to recover; and, Fourth, The existence of some one of the grounds for an attachment enumerated in the preceding section.

SEC. 93. When the ground of the attachment is, that the defendant is a foreign corporation or a non-resident of this Territory, the order of the attachment may be issued without an undertaking. In all other cases, the order of attachment shall not be issued by the clerk until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the clerk, an undertaking double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

SEC. 94. The writ shall be directed to the sheriff of any county in which the property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, and costs; the amount of which demand shall be stated, in conformity with the complaint, unless the defendant shall deposit with the sheriff an amount of money sufficient to cover plaintiff's demand, and costs of suit; which money shall be deposited by the sheriff with the clerk of the court out of which said writ of attachment issued; which money shall be held by said clerk, subject to the further order of the court. Several writs may be issued at the same time, to sheriff's of different courts.

SEC. 95. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interests and profits thereon, and all debts due such defendant, not exempt from execution, may be attached, and if judgment be rendered, be sold to satisfy the judgment and execution.

SEC. 96. The sheriff to whom the writ of attachment is directed

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and delivered shall execute the same without delay, and—if the undertaking mentioned in section ninety-four be not given,—as follows: First, Real property shall be attached by making a list of the same, and by leaving a notice with the owner or occupant thereof, stating that the same has been attached, and at whose instance, if such owner or occupant can be found, or by posting such notice in a conspicuous place on such premises. Second, Personal property, capable of manual delivery, shall be attached by taking it into custody. Third, Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a notice, stating that the stock or interest of the defendant is attached, and at whose instance. Fourth, Debts and credits and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having under his control, or in his possession, such credits or other personal property, a notice that such debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached, and at whose instance.

SEC. 97. Upon receiving information in writing from the plaintiff, his agent or attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a notice that such credits or other property or debts, as the case may be, are attached, and by what authority, and at whose instance.

SEC. 98. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant, at the time of the service upon them of the notice, as provided in the last two sections, shall be—unless such property be delivered up or transferred or such debts be paid to the sheriff—liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him, be satisfied.

SEC. 99. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or

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judge, and be examined on oath, respecting the same. The defendant may also be required to attend, for the purpose of giving information respecting his property, and may be examined on oath. The court or judge, may, after such examination, order personal property, capable of manual delivery, to be delivered to the sheriff, on such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

SEC. 100. The sheriff shall make a full inventory of the property attached, and return the same with the writ, and from the time of leaving such writ or attachment, it shall be a lien upon the property, until the satisfaction of the judgment recovered by the plaintiff, unless the defendant executes the undertaking mentioned in section ninety-four. To enable him to make such return as to debts and credits attached, he shall request, at the time of the service, the party owing the debt, or having the credit, to give him, a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum, may be required to pay the costs of any proceeding taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

SEC. 101. If any property attached be perishable, the sheriff shall sell the same, in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him, to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment, recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

SEC. 102. The sheriff may deliver any of the property attached to the defendant or to any other person claiming it upon his giving a written undertaking therefor executed by two or more sufficient sureties engaging to re-deliver it or pay the value thereof to the sheriff to whom execution upon a judgment obtained by the plaintiff in that action may be issued. If an action be brought upon such undertaking, against the principal or his sureties, it shall be a de-

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fence that the property for which the undertaking was given did not at the execution of the writ of attachment belong to the defendant against whom it was issued.

SEC. 103. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant as herein before provided, or subjected to execution on another judgment recovered previous to issuing the attachment, if it is sufficient for that purpose: First, by paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment. Second, if any balance remain due and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given and the sales conducted as in other cases of sales on execution.

SEC. 104. If after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon execution in other cases. Whenever the judgment shall have been paid, the sheriff upon reasonable demand shall deliver over to the defendant the attached property remaining in his hands and any proceeds of the property attached unapplied on the judgment.

SEC. 105. If the execution be returned unsatisfied in whole or in part the plaintiff may prosecute any undertaking given pursuant to sections ninety-four and one hundred and two, or he may proceed as in other cases upon the return of an execution.

SEC. 106. If the defendant recover judgment against the plaintiff, (on any undertaking received in the action,) all the proceeds of sales and money collected by the sheriff or deposited by the defendant and all the property attached remaining in the sheriff's hands shall be delivered to the defendant or his agent, the order of attachment shall be discharged and the property released therefrom.

SEC. 107. In all cases where there has been more than one attachment issued against the same defendant returnable at the

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same term of court, and more than one judgment rendered against such defendant at the same term of court in cases in which attachments have been issued, and there is not sufficient property of such defendant including the rights, debts and credits attached in such action to satisfy all of said judgments, the court shall direct the sheriff to whom execution may issue or who has under his control any money, rights, credits or other property that may be applied to the satisfaction of such judgments to proceed to sell said property as herein provided and to collect such debts, rights, or credits, and after deducting the costs that may be due in all of said cases, to pay to each such judgment creditor a proportionate share of the remainder of the proceeds of such sales and money collected according to the amount of his judgment.

SEC. 108. Whenever the defendant shall have appeared in the action he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the judge thereof, or to a probate judge, for an order to discharge the same upon the execution of the undertaking mentioned in the next section, and if the application be granted, all the proceeds of sales and moneys collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

SEC. 109. Upon such application the defendant shall deliver to the court or judge an undertaking executed by at least two sureties, residents of the district, to the effect that the sureties will on demand pay to the plaintiff the amount of any judgment that may be recovered in favor of the plaintiff in the action not exceeding the sum specified in the undertaking which shall be sufficient to satisfy the amount claimed by the plaintiff in his complaint and the costs. The sureties may be required to justify on such application before the judge or court, and the property attached shall not be released from the attachment without their justification, if the same be required.

SEC. 110. In all cases where property or effects have been attached, the defendant, or any creditor of the defendant interested, may file a plea in the nature of a plea in abatement, under oath, putting in issue the truth of the facts alleged in the affidavit on which the attachment was sued out.

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SEC. 111. Upon such issue the plaintiff shall be held to prove that the facts alleged by him in said affidavit as the grounds of the attachment existed at the time of the issuance of the writ of attachment.

SEC. 112. If the issue be found against the plaintiff the attachment shall be dismissed at the cost of the plaintiff, and his sureties shall thereafter be liable on their bond for all damages sustained by the defendant in consequence of the issuing of the attachment, and the court shall assess a reasonable fee against the plaintiff for defendant attorney or attorneys.

SEC. 113. After the attachment of property by the sheriff, the defendant, after reasonable notice to the plaintiff, may have the writ of attachment dissolved by showing to the court in which the action is brought, or a judge thereof, or a probate judge, that there was not at the time of the issuing of the attachment any sufficient grounds therefor, or that the property attached is not subject to execution or attachment. If the court or judge hearing the same shall dissolve the attachment, the sheriff shall deliver all property attached remaining in his hands, and all moneys collected by him by virtue of the attachment of the defendant, and the sureties of the plaintiff shall be liable to the defendant for all damages he may have sustained by the issuing of the attachment, not exceeding the amount stated in the plaintiff's undertaking.

SEC. 114. The sheriff shall return the writ of attachment with the summons if issued at the same time, otherwise within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto.

CHAPTER V.

DEPOSIT IN COURT.

SEC. 115. When it is admitted by the pleading or examination of a party that he has in his possession, or under his control, any money, or other things capable of delivery, which being the subject of litigation is held by him as a trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court, or delivered to such party,

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upon such conditions as may be just, subject to the further direction of the court.

SEC. 116. A receiver may be appointed by the court in which the suit is pending, or by a judge thereof, First, Before judgment, provisionally, on the application of either party, when he establishes a *prima facie* right to the property, or to an interest in the property, which is the subject of the action, and which is in possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired. Second, After judgment, to dispose of the property according to the judgment, to preserve it during the pending of an appeal, and, Third, In such other cases as are in accordance with the practice of the courts of equity jurisdiction.

TITLE VII.

CHAPTER I.

TRIAL AND JUDGMENT.

SEC. 117. A judgment is the final determination of the rights of the parties in the action or proceeding.

SEC. 118. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

SEC. 119. In an action against several defendants, the court may in its discretion render judgment against one or more of them, leaving the action to proceed against the others, when a several judgment is proper.

SEC. 120. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint, but in any other case the court may grant him any relief consistent with the case made by the complaint, and embraced within the issue.

SEC. 121. An action may be dismissed, or judgment of nonsuit entered, in the following cases: First, By the plaintiff him-

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self at any time before trial, upon the payment of costs, if a counter claim has not been made. If bonds shall have been executed by the plaintiff, the defendant may then have his action thereon. Second, By either party upon the written consent of the other. Third, By the court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. Fourth, When upon the trial, and before the final submission of the case, the plaintiff abandons it. Fifth, By the court upon the motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal in the first two sub-divisions may be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

SEC. 122. In every case other than those mentioned in the last section, the judgment shall be rendered on the merits.

CHAPTER II.

OF ISSUES AND THE MANNER OF THEIR DISPOSITION.

SEC. 123. An issue arises when a fact or conclusion of law is maintained by the one party and controverted by the other. Issues are of two kinds; First, of law. Second, Of fact.

SEC. 124. An issue of law arises upon a demurrer to any pleading, or any part thereof.

SEC. 125. An issue of fact arises, First, Upon a material allegation in the complaint controverted by the answer. Second, Upon new matters in the answer, except an issue of law is joined therein.

SEC. 126. An issue of law shall be tried by the court unless it be referred upon consent, as otherwise provided.

SEC. 127. An issue of fact shall be tried by a jury, unless a jury trial be waived, or reference ordered, as provided in this act. Where there are issues both of law and fact to the same complaint, the issues of law shall be first disposed of.

SEC. 128. The clerk shall enter causes upon the docket of the court according to their order in filing, and shall set as many causes for trial on each day of the term as he shall think proper, as they are filed; but no civil cause shall be set for trial on the first day of the term, and no cause shall be tried before the day on which it

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set for trial, except by consent of the parties, unless the defendant makes default. All causes not finally disposed of at the close of the term, shall be continued until the next term of the court.

SEC. 129. Either party may bring the issue to trial or to a hearing, and in the absence of the adverse party — unless the court for good cause shown, otherwise direct,— may proceed with his case and take a dismissal of the action, or a verdict or judgment as the case may require.

SEC. 130. A motion to postpone a trial on the ground of the absence of evidence, shall be made only upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, the witness that the party expects to obtain, and the facts he expects to prove by him, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

CHAPTER III.

SEC. 131. When the action is called for trial by jury, the jurors summoned who have appeared and not been excused, shall be called. If the panel is not full, the sheriff shall summon from the citizens of the county — and not from the by-standers — so many competent persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

SEC. 132. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they each of them will well and truly try the matters in issue between —— ———, the plaintiff, and —— ———, the defendant, and a true verdict render according to the evidence.

SEC. 133. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual

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jurors, and shall be either peremptory or for cause. Each party shall be entitled to four peremptory challenges.

SEC. 134. Challenges for cause may be taken on one or more of the following grounds: First, A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second, Consanguinity or affinity within the third degree to either party. Third, Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party. Fourth, Having served as a juror, or been a witness, on a previous trial between the same parties for the same cause of action. Fifth, Interest on the part of the juror in the event of the action, or in the main question involved in the action, except the interest of a juror as a member or citizen of the municipal corporation. Sixth, Having formed or expressed an unqualified opinion or belief as to the merits of the action. Seventh, The existence of a state of mind in the juror evincing enmity against, or bias to, either party.

SEC. 135. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

CONDUCT OF THE TRIAL.

SEC. 136. If after the impanelling of the jury, and before verdict, a juror becomes sick, or for any other cause is unable to perform his duty, the court may order him to be discharged in that case, the trial may proceed with the other jurors with the consent of the parties to the action, or a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards be impanelled.

SEC. 137. In charging the jury, either party shall be allowed to present to the court written instructions upon matters of law, and argue the same to the court, and the court shall give or refuse such instructions, or may modify or change them in writing, but under no circumstances shall the court give any verbal instructions, or modify or alter any instruction offered by verbal comments; and

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when any instruction is given, refused, or altered, the court shall note the same thereon in writing; nor shall the court comment upon the testimony further than to inform the jury that they are the exclusive judges of all questions of fact submitted to them, and if the parties or their attorneys require it, the instructions shall be given to the jury before the argument of the cause.

SEC. 138. After hearing the charge, the jury may either decide in court or retire for deliberation; if they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons, he shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

SEC. 139. Upon retiring for deliberation, the jury may take with them the instructions of the court, and all papers — except depositions — which have been received as evidence in the case, or copies of such papers as ought not in the opinion of the court to be taken from the person having them in possession. And they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

SEC. 140. After the jury have retired for deliberation, if there be a disagreement between them as to any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the parties or counsel.

SEC. 141. In all cases where a jury is discharged, or prevented from giving a verdict from any cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct.

SEC. 142. While the jury is absent, the court may adjourn from time to time, in respect to other business, but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury dis-

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charged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

SEC. 143. When the jury shall have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. Their names shall be called, and they shall be asked by the court or clerk whether they have agreed upon their verdict, and if they answer in the affirmative, they shall pass the same to the court or clerk.

SEC. 144. If the verdict be informal or insufficient, in not covering the whole issue or issues submitted, the verdict may be corrected by the jury, under the advice of the court, or the jury may again be sent out.

SEC. 145. When the verdict is given, and is not informal or insufficient, the court or clerk shall read it to the jury and inquire of them whether it be their verdict. If any juror disagrees, the jury may be sent out again, but if no disagreement be expressed, the verdict shall be received and the jury discharged from the case.

THE VERDICT.

SEC. 146. The verdict of the jury shall be either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which they find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

SEC. 147. All verdicts shall be rendered in writing, and presented by the foreman of the jury.

SEC. 148. In an action for the recovery of money only, or specific real property, the jury in their discretion may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict upon all or any of the issues, and in all cases may instruct them—if they render a general verdict—to find upon particular questions of fact to be stated, and may direct

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a finding thereon. The verdict shall be filed with the clerk, and entered in the minutes of the cause. When a special finding of the facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 149. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

SEC. 150. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

SEC. 151. Judgment shall immediately be entered upon the verdict, unless the cause be for some reason further postponed by the court.

TRIAL BY THE COURT.

SEC. 152. Trial by jury may be waived by the several parties to an issue of fact, in actions arising on contract, and with the assent of the court, in other actions in the manner following: First, By failing to appear at the trial. Second, By written consent, in person or by attorney, filed by the clerk. Third, By oral consent in open court entered in the minutes.

SEC. 153. Upon the trial of an issue of fact by the court, it shall state the fact found, and judgment shall be entered accordingly.

SEC. 154. Chancery cases may be tried by the court, with or without the finding of a jury, upon issue formed by the court; and on a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

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REFERENCES AND TRIAL BY REFEREES.

SEC. 155. All or any of the issues in the action, whether of fact, of law, or both, may be referred, upon the written consent of the parties.

SEC. 156. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

SEC. 157. When the trial of an issue of fact shall require the examination of a long account, on either side in which case the referee may by directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein, or where the taking of an account shall be necessary for the information of the court before judgment upon on issue of law, or for carrying a judgment or order into effect, or when a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action.

SEC. 158. When it is necessary for the information of the court in a special proceeding.

SEC. 159. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three.

SEC. 160. When the appointment of the referees is made by the court or judge, each referee shall be, First, Qualified as a juror, as provided by statute. Second, Competent as a juror between the parties.

SEC. 161. When the referees are chosen by the court, each party shall have the same right to challenge as to such referees to be made and determined, in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to peremptory challenge, subject to the limitations and directions prescribed in the order of reference. The trial by referees shall be conducted in the same manner as trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order, and punish all violations thereof upon such trial, and compel the attendance of witnesses, and punish them for non-

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attendance or refusal to be sworn to testify, as is possessed by the court.

SEC. 162. The report of the referees shall state the facts found, and when the order of reference includes an issue of law, it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted upon the trial, and the party offering the same shall except to the decision rejecting such evidence at the time, the exception shall be noted by the referees, and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous or inadmissible, require that the party at whose instance it was taken and reported to pay all costs and expenses thereby incurred.

SEC. 163. The report shall be filed with the clerk. If it be filed in term time, either party may, within such time as may be prescribed by the rules of the court or by special order, move to set the same aside, or for judgment thereon, or such order or proceedings as the nature of the case may require. If the report be filed in vacation, the like proceedings may be had at the next term following. The court may affirm or set aside the report, either in whole or in part. If it affirm the report, it shall give judgment accordingly. If the report be set aside, either in whole or in part, the court may make another order of reference as to all, or so much of the report as is set aside, to the same referees, or others, or it may find the facts and determine the law itself, and give judgment accordingly. Upon a motion to set aside a report, the conclusion thereof shall be deemed and considered as the verdict of a jury.

EXCEPTIONS.

SEC. 164. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, or in the admission of evidence, or in the charge to a jury, or at any time from the calling of the cause to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material and affect the substantial rights of the parties.

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SEC. 165. The point of the exception shall be particularly stated and shall be delivered to the judge, who shall, if the same is conformable to the truth, sign the same, and if the same is not conformable with the facts, it shall be corrected by the court until it is made so; when it shall be signed by the judge and filed with the clerk.

SEC. 166. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain, but no more, and the whole as briefly as possible.

SEC. 167. When a cause has been tried by the court or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on a motion for a new trial or appeal, without any special notice that an exception is taken thereto.

NEW TRIALS.

SEC. 168. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees in action at law, but in chancery cases such re-examination shall be called a re-hearing, and motions for a new trial or re-hearing, as the case may be, shall be conducted as in this article provided.

SEC. 169. The former verdict or other decision may be vacated and a new trial or re-hearing granted on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party: First, Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial. Second, Misconduct of the jury. Third, Accident or surprise which ordinary prudence could not have guarded against. Fourth, Newly-discovered evidence, material for the party making the application, but which he could not with reasonable diligence have discovered and produced at the trial. Fifth, Excessive damages, appearing to have been given under the influence of passion or prejudice. Sixth, That the verdict is contrary to law, evidence, or both. Seventh, Error of law occurring at the trial and excepted to by the party making the application.

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SEC. 170. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it shall be made upon affidavit; for any other cause it shall be made upon a statement prepared as provided in the next section.

SEC. 171. The party intending to move for a new trial or re-hearing shall give notice of the same within two days after the trial, and shall, within five days after such notice, prepare and file with the clerk the affidavit required by the last section, or a statement of the grounds upon which he intends to rely. If no affidavit or statement be filed within five days after the notice, the right to move for a new trial shall be deemed to have been waived. The statement shall contain so much of the evidence or reference thereto, as may be necessary to explain the grounds taken, and no more. Such statement, when containing any portion of the evidence of the case, and not agreed to by the adverse party, shall be settled by the judge upon notice. On the argument, reference may also be made to the pleadings, depositions and documentary evidence on file and in the minutes of the court. If application be made upon the affidavits filed, the adverse party may use counter affidavits on the hearing. Any counter affidavits shall be filed with the clerk one day at least previous to the hearing.

SEC. 172 The application for a new trial or re-hearing shall be made at the earliest period practicable after filing the affidavit or statement.

JUDGMENTS.

CHAPTER IV.

SEC. 173. When trial by jury has been had, judgment shall be entered by the clerk in conformity to the verdict within twenty-four hours after the rendition of the same, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

SEC. 174. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

SEC. 175. If a counter claim established at a trial exceeds the plaintiff's demand so established, judgment for the defendant shall

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be given for the excess; or if the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

SEC. 176. In an action to recover personal property, judgment may be for the plaintiff for the possession, or value thereof, in case a delivery thereof cannot be had, and damages for the detention of the same. If the property has been delivered to the plaintiff, and the defendant claims a return of the property, judgment for the defendant may be for the return of the property or the value thereof—in case a return cannot be had—and damages for taking and withholding the same.

SEC. 177. The judgment shall be entered in the order book, and shall specify clearly the relief granted or other determination of the action, and if the judgment be for money, the amount thereof shall be stated in words.

SEC. 178. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party unless such judgment is for the purchase-money thereof, but shall be payable in the course of administration on his estate.

SEC. 179. The clerk shall keep a docket which shall be styled a "Judgment Docket," in which he shall enter under their appropriate heads the names of the parties against whom judgment was rendered. If the judgment is for money, the amount thereof, the date of the rendition of the judgment, and the page where entered in the order book, and leave a space sufficient to enter satisfaction of the judgment.

SEC. 180. The judgment shall, from the date of its rendition, become a lien upon all the real property of the judgment debtor not exempt from execution in the county in which it is rendered owned by him at the time, or in which he has any interest, or any that he may afterwards acquire until said lien expires. The lien shall continue for two years unless the judgment is previously satisfied.

SEC. 181. A transcript of the judgment, certified by the clerk and under seal of the court, may be filed with the recorder of any other county, and from the time of the filing the judgment shall become a lien upon all the real property of the judgment debtor not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien

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expires. The lien shall continue for two years, unless the judgment be previously satisfied.

SEC. 182. Satisfaction of a judgment may be entered in the judgment docket by the judgment creditor or his attorney, and by the clerk when an execution thereon is returned satisfied, and upon the record of the same, filed with any recorder as herein provided, by the judgment creditor or his attorney, or by filing with such recorder an acknowledgment of satisfaction, acknowledged before any person authorized to take the acknowledgment of deeds, which shall be recorded by such recorder and shall refer to such judgment. Whenever a judgment is satisfied otherwise than upon execution, it shall be the duty of the party or attorney to satisfy the same or give acknowledgment of satisfaction, as the case may be, and on motion the court may order it to be done.

CHAPTER V.

EXECUTIONS.

SEC. 183. The party in whose favor judgment is given may at any time within five years from the entry thereof issue a writ of execution for its enforcement, as prescribed in this chapter.

SEC. 184. The writ of execution shall be issued in the name of the Territory of Montana, sealed with the seal of the court and signed by the clerk, and shall be directed to the sheriff of the county where it is to be executed, and shall intelligibly refer to the judgment, stating the court, the county where the judgment was rendered, the names of the parties, the judgment, and if it be for money, the amount thereof, and the amount actually due thereon, and shall require the sheriff substantially as follows: First, If it be for money, it shall require the sheriff to satisfy the judgment, interest and costs, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property, or if the judgment be a lien upon real property, then out of the real property belonging to him on the day the judgment was rendered, or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the judgment was filed in the office of the recorder of such county, or at any time thereafter. Second, If it be against

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real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest and costs, out of such property. Third, If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, and the value of the property for which judgment was recovered, to be satisfied therein, if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property of the defendant.

SEC. 185. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants, and the undivided property only of the defendants who were served, or who appeared in the action. In other respects the writ shall be as herein provided.

SEC. 186. The execution shall be made returnable within sixty days after its receipt by the sheriff to the office of the clerk of the court where the judgment was rendered.

SEC. 187. The sheriff receiving an execution shall endorse thereon the day, month, and year, when he received the same.

SEC. 188. Where the judgment requires payment of money, or the delivery of real or personal property, the same shall be enforced in those respects by execution. When it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced.

SEC. 189 After the lapse of five years from the entry of judgment, an execution shall be issued only by leave of the court on motion. Such leave shall not be given unless it be established by the oath of the party, or other proof, that the judgment, or some part thereof, remains unsatisfied and due.

SEC. 190. Notwithstanding the death of a party after the judg-

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ment, execution may issue thereon against the property of the debtor by permission of the probate court, and shall be issued and executed in the same manner, and with the same effect, as if the judgment debtor were alive.

SEC. 191. Executions against the property of the judgment debtor may be issued to any court, and executions may be issued to the different counties at the same time. Where an execution requires the delivery of real or personal property, it shall be issued to the county where the property or some part thereof is situated.

SEC. 192. All goods, chattels, moneys, and other property real or personal of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Until a levy, property shall not be affected by the execution. Shares and interests in any corporation or company, and debts and credits, and other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust, and gold and silver bullion, shall be returned by the officer as so much money collected at its current value, without exposing the same for sale.

SEC. 193. All real and personal estate belonging to any married woman at the time of her marriage, and all which she may have acquired subsequently to such marriage, or to which she shall have after become entitled in her own right, and all her personal earnings, and all the issues, rents and profits of such real estate, shall not be liable to attachment for or execution upon any liability or judgment against the husband so long as she or any minor child of her body be living: *Provided*, that her separate property shall be liable for debts owing by her at the time of her marriage.

SEC. 194. The following property shall be exempt from execution or attachment, except as hereinafter specially provided: First, A homestead not exceeding three thousand dollars in value, to include the dwelling-house and other buildings, and the lands and lots upon which they stand. Second, All wearing apparel of every person and family. Third, All private libraries, musical instruments, family pictures, and keepsakes. Fourth, To each household two beds and bedding, and one additional bed and bedding for every two members of the family, and other household goods and utensils and furniture not exceeding two hundred and fifty dollars in value. Fifth, To each household one horse, two cows with their

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calves, ten swine, two stands of bees, fifty domestic fowls, and provisions and fuel for the comfortable maintenance of such household and family for three months. *Provided*, That in case such householder shall not possess, or shall not desire to retain, the animals above named, he may select from his stock and retain other animals not to exceed three hundred dollars in value. Sixth, To a farmer, the tools, implements, and farming utensils actually used about the farm, two yoke of oxen, with yokes and chains, or one span of horses, with harness and one wagon. Seventh, To a mechanic, the tools and instruments used to carry on the trade, occupation or business in which he is engaged for his support or the support of his family, also material not exceeding in value two hundred dollars. Eighth, To physicians, their libraries and medicines, not exceeding in value two hundred dollars. Ninth, To attorneys, clergymen, teachers, and other professional men, their libraries. Tenth, All property of the Territory, or of any county, incorporated city, town or village therein, or of any public or municipal corporation of like character. Eleventh, All fire-arms kept for the use of any person or family. Twelfth, To any person a skiff, or small boat, with its oars, sails, and rigging, not exceeding in value fifty dollars. Thirteenth, The tent and furniture, including a table, camp-stools, bed and bedding of a miner, his rocker, shovels, spades, picks, wheelbarrows, pumps, cabin, sluice-boxes and flumes, and other instruments used in mining, with provisions necessary for his support for three months. Fourteenth, A sufficient quantity of hay or grain or feed for keeping for three months the animals mentioned in the several sub-divisions of this section as exempt from execution or attachment. But no article of property mentioned in this section shall be exempt from an execution issued upon a mortgage thereon, or for any tax levied thereon, or for any judgment for the purchase money thereof. *Provided*, That no mortgage made by a married man of any property exempt from execution and attachment by this act, shall be of any validity unless the wife shall join in such mortgage, and the same be witnessed and acknowledged by her the same as required in case of a deed conveying her interest in real estate.

SEC. 195. Any person desiring to take the benefit of this act shall do so at the time property is levied on or attached, or within a reasonable time thereafter, according to circumstances.

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SEC. 196. In all cases the defendant may select the property which he claims as exempt.

SEC. 197. When a sheriff or other officer has levied upon or attached, or is about to levy upon or attach, personal property which is claimed to be by law exempt from execution or attachment, the sheriff or other officer shall, if required by the person claiming, forthwith summon three discreet and disinterested men, having the qualifications of jurors, and resident in the vicinity where the property is found, and administer to them an oath impartially to examine and determine how much, if any, of said property is so exempt. Such persons shall have full power to summon witnesses, administer the necessary oath, and adjourn from time to time, not longer than three days in all. They shall also have power to appraise the property claimed, and the other property of the claimant, so far as may be necessary to determine what portion of it is exempt. They shall deliver their decision to the sheriff in writing, and he shall forthwith deliver to the person claiming, such as is decided by them exempt from execution; but nothing in this section contained shall prevent the person claiming the property from giving a bond and trying his right of property before the district court, as provided in cases for trying the right of property claimed by persons other than the judgment debtor.

SEC. 198. The sheriff shall execute the writ against the property of the judgment debtor by levying on a sufficient amount of property, if there be sufficient, collecting and selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment, or depositing the amount with the clerk of the court. Any excess in the proceeds over the judgment and all costs due shall be returned to the defendant or other person entitled thereto. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the costs due, within view of the sheriff, he shall levy on only such part of the property as the judgment debtor may indicate: *Provided*, that the judgment debtor be present and indicate at the time of the levy such part; and, *Provided*, that the property be amply sufficient to satisfy such judgment and costs.

SEC. 199. Before the sale of property on execution, notice thereof shall be given, as follows: First, In cases of perishable

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property, by posting written or printed notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable considering the character and condition of the property. Second, In cases of other personal property, by posting a similar notice in three public places in the township or city where the sale is to take place, ten days before the day of sale. Third, In case of real property, by posting a similar notice, particularly describing the property, in three of the most public places in the township or city in which such property is situated, twenty days before the day of sale, and by publishing a similar notice once a week, for three weeks successively, before the day of sale, in a newspaper published in the county in which such property is situated, if there be one published therein, and such notices shall particularly state the time and place of all such sales All sheriff's sales on execution shall take place between ten o'clock in the forenoon and four o'clock in the afternoon.

SEC. 200. An officer selling without notice, as prescribed by the last section, shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages; and a person wilfully taking down or defacing the notice posted, if it be done before the sale or satisfaction of the judgment — if the judgment be satisfied before sale — shall forfeit five hundred dollars.

SEC. 201. All sales of property under execution shall be made at auction, to the highest bidder; and when sufficient has been sold to satisfy the execution, including the costs, the sale shall stop. Neither the officer holding the execution nor his deputy, nor any one acting under him, shall become a purchaser, either directly or indirectly, at such sale. When the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as likely to bring the highest prices; and when the sale is of real property, and consists of several known lots or parcels, they shall be sold separately; or when a portion of such property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real and personal, shall be sold, when such property consists of several known lots or parcels, or of arti-

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cles which can be sold to advantage separately, and the officer shall be bound to follow such directions.

SEC. 202. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property immediately, or at any time afterwards, to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, by motion, upon previous notice of five days, before any court, or before any justice of the peace, if the same shall not exceed his jurisdiction.

SEC. 203. Such court or justice shall proceed in a summary manner to give judgment, and issue execution thereon forthwith, but the defendant may claim a jury. And the same proceeding may be had against any subsequent purchaser who may refuse to pay, and the officer may in his discretion thereafter reject the bid of any person so refusing.

SEC. 204. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

SEC. 205. When the purchaser of any personal property capable of manual delivery shall pay the purchase-money, the officer making the sale shall deliver to the purchaser the property, and, if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title and interest which the debtor had in and to such property on the day the execution was levied.

SEC. 206. In case of the sale of real property, the sheriff shall execute to the purchaser, upon the payment of the purchase-money, a deed showing the parties to the judgment, the court and county in which the judgment was rendered, the amount thereof, the date of the judgment, and the facts showing that the law has been complied with in respect to the sale. Such deed shall convey to the purchaser all the interest of the judgment debtor in the property sold.

SEC. 207. If a purchaser of real property sold on execution, or his successor in interest, be ejected therefrom in consequence of irregularity in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser

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of the property at sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and when so revived, the said judgment shall have the same effect as the original judgment of said court of that date, and bearing interest as aforesaid, and any other or after acquired property, rents, issues, or profits of the said debtor, shall be liable to levy and sale under execution in satisfaction of such debt: *Provided*, that no property of such debtor sold *bona fide* before the filing of such petition shall be subject to the lien of said judgment.

CHAPTER VI.

DOCKETS.

SEC. 208. The clerk of the district and probate courts shall procure, at the expense of the county, an order book, court docket, bar docket, and such other books required by law to be kept by such clerk, or as the court may order.

SEC. 209. The proceedings of each day's business of court shall be entered up by the clerk in the order book, in full, and shall be read in open court on each morning, and signed by the judge.

SEC. 210. The clerk of the court shall prepare a court docket and a bar docket. The court docket shall be for the use of the court, and the bar docket for the use of the bar. Each shall show the names of the parties to each case, the number thereof, the plaintiffs and defendants, attorneys, the date of the commencement of the cause, and the day on which the same is set for trial. There shall be sufficient space left on the court docket at each cause for the judge to make full minutes of all that is done therein, and it shall be the duty of the judge to make such minutes at the time that any proceedings are therein had.

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CHAPTER VII.

CLAIM TO PROPERTY LEVIED UPON OR ATTACHED.

SEC. 211. When any other than the judgment debtor shall claim property levied upon or attached, he shall have the right to demand and receive the same from the officer making the levy or attachment, upon his making an affidavit that the property is his, or that he has the right to the immediate possession thereof, stating the value thereof, and describing the same, and giving to the officer a bond, with sureties in double the value of such property, conditioned that he will appear at the next term of the court in the district in which the property was seized, which shall commence ten days or more after the acceptance of the bond by the officer, and make good his title to the same, or that he will return such property to the officer or pay its value. If the officer require it, the sureties shall justify as in other cases, and in case they do not justify when required, the officer shall retain the property. If such officer do not require the bail to justify, he shall stand good for their sufficiency. He shall date and indorse his acceptance on the bond.

SEC. 212. The officer shall return the affidavit, bond, and justification, if any, to the officer of the district court, and the clerk shall place the same upon the docket of the court at the first term, which shall commence ten days or more after the acceptance of the bond by the officer, as above provided for, and it shall stand for trial at that term, and it shall be governed by rules regulating other trials

SEC. 213. The person claiming the property shall be the plaintiff, and the officer and plaintiff in the execution or attachment defendants.

SEC. 214. If the claimant make good his title to the property, the bond shall be cancelled; if to a portion thereof, a like portion of the bond shall be cancelled; but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such less amount as shall not exceed the amount due on the original execution or attachment. When the judgment is in favor of the officer for the entire property, the claimant shall pay the costs. When the claimant recovers all

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the property, judgment shall be given in favor of the claimant for costs. When the claimant recovers a portion of the property only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the person who was plaintiff in the execution or attachment, or the court may in its discretion, if it be of the opinion that the officer levied upon said property without the exercise of due caution, adjudge him to pay the costs, or any portion thereof.

CHAPTER VIII.

Proceedings supplementary to Execution.

Sec. 215. When an execution against the property of the judgment debtor, or any one of several debtors, in some judgment issued to the sheriff of the county where he resides, or if he does not reside in this Territory, to the sheriff of the county where the judgment is rendered, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from a judge of the court requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a judge or referee out of the county in which he resides when proceedings are taken under the provisions of this act.

Sec 216. After the issuing of an execution against property, and upon proof upon affidavit of a party or otherwise, to the satisfaction of the court, or of a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge, or referee appointed by him, to answer concerning the same, and such proceeding may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as is provided upon the return of an execution. The court may enforce its orders by imprisonment if the judgment debtor fail or refuse to obey the same.

Sec. 217. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff

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the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 218. After the issuing and return of an execution against the property of a judgment debtor, or of any one of several judgment debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

SEC. 219. Witnesses may be required to appear and testify before the judge or referee upon any proceedings under this act in the same manner as upon a trial of an issue

SEC. 220. The judge may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services at any time within thirty days next preceding the order shall not be so applied, when it shall be made to appear, by the debtor's affidavit or otherwise, that such earnings are necessary for the support of a family supported in whole or in part by his labor.

SEC. 221. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order to that effect, the judgment creditor to institute suit against such person or corporation for the recovery of such interests or debt; and the court or judge may by an order forbid the transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time upon such terms as may be just.

SEC. 222 If any person, party, or witness disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference for a contempt.

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TITLE VIII.

CHAPTER I.

Foreclosure of Mortgages.

Sec. 223. There shall be but one action for the recovery of debt or the enforcement of any right secured by mortgage or lien upon real estate or personal property, which shall be for the enforcement of such lien or mortgage in accordance with the provisions of this chapter. In such action, the court shall have power to foreclose the defendant's equity of redemption in the mortgaged property, and direct a sale thereof for the purpose of satisfying the amount due the plaintiff and the costs and expenses of foreclosure and sale.

Sec. 224. If the debt for which the mortgage, or lien, or incumbrance, is held be not all due, the court or jury trying the cause shall find the amount due, and the time and amount of such other sums as may become due; and if it shall appear to the court or jury that the mortgaged property can be sold in parcels without injury to the same, the same shall be so sold, and the plaintiff may have execution on his several establishments, as they severally become due; but if such property cannot be sold in parcels without injury to the same, then the court may direct that all such property be sold and the proceeds to be applied, first to the satisfaction of the amount due and costs, and then to the amount next to become due, and so on, until the whole amount due or to become due to the plaintiff is paid, deducting legal interest from the same from the time the same is paid until the time the same would have become due.

Sec. 225. If there be a surplus remaining after the satisfaction of the mortgage debt and costs, it shall be paid to the person entitled to the same, or it may be deposited in court.

Sec. 226. All sales of mortgaged property shall be conducted in the same manner and subject to the same rules as to notice and the execution of conveyances, and in all other respects as sales under execution.

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SEC. 227. If the mortgaged property shall not sell for a sum sufficient to satisfy the amount due the plaintiff and costs, the plaintiff may have execution for the balance in the same manner as executions are issued in other cases. Judgments rendered in foreclosures of mortgages shall be a lien upon the real estate of the judgment debtor the same as judgment in other cases.

CHAPTER II.

ACTIONS FOR NUISANCE, WASTE, AND WILFUL TRESPASS, IN CERTAIN CASES, ON REAL PROPERTY.

SEC. 228. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, or the obstruction of any highway, or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, so as to interfere with the comfortable enjoyment of life and property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

SEC. 229. If a guardian, tenant for life or years, joint tenant or tenant in common, of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

SEC. 230. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

SEC. 231. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land or adjoining it.

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SEC. 232. If a person recover damages for a forcible or unlawful entry in or upon or detention of any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER III.

ACTIONS IN RELATION TO REAL ESTATE.

SEC. 233. An action may be brought by any person in possession, by himself or his tenant of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate or interest.

SEC. 234. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

SEC. 235. In an action for the recovery of real property, where the plaintiff shows a right to recovery at the time the action was commenced, but it appears that his right has terminated during the pleading of the action, the verdict and judgment may be according to the fact, and the plaintiff may recover damages for withholding the property.

SEC. 236. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

SEC. 237. The court in which an action is pending for the recovery of real property, or a judge thereof, may, on motion, upon notice to either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof for purpose of the action.

SEC. 238. The order shall describe the property, and a copy thereof shall be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants and make such survey and measurement, but if any

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unnecessary injury be done to the property he shall be liable therefor.

SEC. 239. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

SEC. 240. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of the real property during the foreclosure of a mortgage thereon, or after a sale on execution before a conveyance is executed.

SEC. 241. An action for the recovery of real property, against a person in possession, cannot be prejudiced by an alienation made by such person, either before or after the commencement of the trial.

CHAPTER IV.

ACTIONS FOR USURPATIONS.

SEC. 242. An action may be brought by the district attorney in the name of the people of Montana Territory upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this Territory. And it shall be the duty of the district attorney to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.

SEC. 243. Whenever such action is brought, the district attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the party rightly entitled to the office, with a statement of his right thereto, and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office and by means of his usurpations thereof, an order may be granted by the judge of the supreme court, or a district judge, for the arrest of such defendant and holding him to trial, and thereupon he may be arrested and held to bail for his appearance at the trial, and for his compliance with

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any order or judgment that may be rendered against him in such action.

SEC. 244. In every such case, judgment may be rendered upon the right of the defendant, and also upon the right of the party alleged to be entitled, or only upon the right of the defendant, as justice shall require.

SEC. 245. If judgment be rendered upon the right of the person alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the duties of the office, and he may by action recover the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

SEC. 246. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

SEC. 247. When a defendant against whom such action has been brought is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine, not exceeding five thousand dollars, which fine when collected shall be paid into the treasury of the Territory.

TITLE IX.

CHAPTER I.

APPEALS.

SEC. 248. A judgment, or order in civil action, except when expressly made final in this act, may be revived, as prescribed by this title, and not otherwise.

SEC. 249. An order made out of court, without notice to the adverse party, may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

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SEC. 250. Any party aggrieved, may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party the appellee.

SEC. 251. An appeal may be taken, First, From a final judgment in action or special proceeding commenced in the court in which the judgment is rendered within six months after the rendition of the judgment. Second, From a judgment rendered on an appeal from the probate court within ninety days after the rendition of the judgment. Third, From an order granting or refusing a new trial or re-hearing, from an order refusing to change the place of trial of an action or proceeding after a motion is made therefor in the case provided by law, or on the ground that the judge is disqualified from hearing or trying the same, from an order granting or dissolving an injunction, and from an order refusing to grant or dissolve an injunction, and from any special order made after final judgment within sixty days after the order is made and entered in the minutes of the court.

SEC. 252. The appeal shall be made by filing with the clerk of the court with whom the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

SEC. 253. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall within twenty days after the entry of such judgment or order prepare such statement, which shall contain the grounds upon which he intends to rely upon the appeal, and so much of the evidence as shall be necessary to explain the grounds, and no more, and shall file the same with the clerk. The appellee may within five days thereafter prepare amendments to the statement, and serve a copy of the same on the appellant. If such amendments be admitted, the statement shall be corrected accordingly, and if not admitted the statement and amendments shall be presented to the judge who tried the case, upon notice of two days to the appellee, and a true statement shall thereupon be settled by such judge.

SEC. 254. If the party shall omit to make a statement within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit

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within the several times above limited, the one party to propose amendments the other to notify an appearance before the judge, they shall be respectively deemed, the former to have agreed to the statement as proposed, and the latter to have agreed to the amendment as proposed, and no settlement of the statement or certificate thereto by the judge shall be required.

SEC. 255. The several periods of time above limited may be enlarged upon good cause shown by the judge before whom the cause was tried.

SEC. 256. The statement, when settled by the judge, shall be signed by him, with his certificate that the same has been allowed and is correct. When the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

SEC. 257. The clerk shall annex the statement, if the appeal be from a final judgment, to the transcript of the proceedings, including a copy of all the pleadings, motions and orders made in the cause; if the appeal be from an order, to such order or a copy thereof.

SEC. 258. The provisions of the last preceding sections shall not apply to appeals taken from an order made upon an affidavit filed, but such affidavit shall be annexed to the order in the place of the statement mentioned in those sections.

SEC. 259. Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment.

SEC. 260. Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from in the respect mentioned in the notice of appeal, and as to any or all of the parties and may set aside, or confirm, or modify any or all of the proceedings subsequent to or dependent upon such judgment or order, and may if necessary or proper order a re-hearing. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property or rights lost by the erroneous judgment or order; and when it appears to the appellate court that the appeal was made for delay, it may add to the costs and damages as may be just.

SEC. 261. On an appeal from final judgment, the appellant

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shall furnish the court with a copy of the notice of appeal, a transcript of all the pleadings, motions, orders, judgments, and proceedings, and the statement annexed — if there be one — certified by the clerk to be correct. On an appeal from a judgment rendered on an appeal or from an order, the appellant shall furnish the court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of all the papers used in the hearing or trial in the court below, such copies to be certified by the clerk that they are correct. If any written opinion be placed on file on rendering the judgment or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers, the appeal may be dismissed.

CHAPTER II.

Appeal to the Supreme Court from the District Court.

Sec. 262. An appeal may be taken from the district court to the supreme court in the following cases: First, From a final judgment rendered in an action or special proceeding commenced in those courts, or brought into the courts from another court. Second, From an order granting a new trial or re-hearing, or refusing the same; from an order refusing to change the place of trial of an action or proceeding after a motion is made therefor in the cases provided by law, or on the ground that a judge is disqualified from hearing or trying the same; from an order granting or dissolving an injunction, and from any special order made after final judgment.

Sec. 263. To render an appeal effectual for any purpose in any case, a written undertaking in not less than three hundred dollars shall be executed on the part of the appellant by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or that sum shall be deposited with the clerk of the court in which the judgment was rendered to abide the event of the appeal. Such undertaking shall be filed, or such deposit made with the clerk, within five days after the notice of the appeal is filed.

Sec. 264. If the appeal be from a judgment or order, directing the payment of money, it shall not stay the execution of the

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judgment or order unless a written undertaking be executed on the part of the appellant by two or more sureties — stating their place of residence,— to the effect that they are bound in double the amount named in the judgment or order, that if the judgment or order appealed from, or any part thereof, be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal, which undertaking shall be approved by the clerk.

SEC. 265. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order shall not be stayed by appeal unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint, or unless an undertaking be entered into on the part of the appellant, with at least two sureties, to the approval of the clerk, and in such amount as the court or judge thereof, or probate judge, may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

SEC. 266. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk of the court in which the judgment or order is entered, to abide the judgment of the appellate court.

SEC. 267. If the judgment appealed from direct the sale or delivery of possession of real or personal property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit nor suffer to be committed any waste thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of such property from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises and the payment of a deficien-

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cy arising upon the sale, and the appeal is by the mortgagor, the undertaking shall also provide for the payment of such deficiency.

SEC. 268. Whenever an appeal is perfected as provided by the preceding sections in this chapter, it shall stay all further proceedings in the court below upon the judgment or order appealed from, or upon the matter embraced therein, but the court below may proceed upon any other matter included in the action and not effected by the judgment or order appealed from. And the court below may in its discretion dispense with or limit the security required by the said sections when the appellant is an executor, administrator, trustee, or other person acting in another's right.

SEC. 269. The undertaking prescribed by the preceding sections may be separate, or all included in one, at the option of the appellant.

SEC. 270. An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties, that they are each worth the amount specified therein, over and above all their just debts and liabilities, exclusive of property exempt from execution, except where the judgment exceeds three thousand dollars, and the undertaking on appeal is executed by more than two sureties, they may state in their affidavit that they are severally worth amounts less than that expressed in the undertaking if the whole amount be equivalent to that of two sufficient sureties. In all cases where an undertaking is required on appeal by the provisions of this chapter of this act, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking, and in all cases the undertaking or deposit may be waived by the written consent of the appellee.

SEC. 271. In all cases not herein provided for the perfecting of an appeal, by giving the undertaking as herein required, or by making a deposit as before specified, shall stay all proceedings in the court below upon the judgment or order appealed from, except that where it directs the sale of perishable property the court below may order the property to be sold and the proceeds thereof deposited to abide the judgment of the appellate court.

SEC. 272. Appeals in the supreme court may be brought to a hearing by either party, upon a notice of three days to the opposite

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party. Before the argument, each party shall furnish to the other a copy of his points and authorities, and file one copy thereof with the clerk.

SEC. 273. When judgment is rendered upon the appeal, it shall be certified by the clerk of the supreme court to the clerk of the court in which the judgment appealed from is entered, who shall enter the same at length in the order book and minutes against the judgment or order appealed from, a reference to the judgment of the supreme court, with a brief statement that such judgment or order has been affirmed, reversed, or modified, as the case may be.

CHAPTER III.

APPEALS FROM PROBATE TO DISTRICT COURTS.

SEC. 274. An appeal may be taken from the probate court to the district court of the district in which the probate court is held, in the following cases: First, From an order or decree admitting a will to probate or refusing the same. Second, From an order setting apart property or making an allowance for the widow or children. Third, From an order granting letters testamentary or of administration, or appointing a guardian of an infant or of an insane person, or of a person incompetent to manage his own property, or refusing to grant such letters, or to make such appointment, or making such letters of appointment. Fourth, From an order directing the sale or conveyance of real property. Fifth, From an order or decree by which a debt, claim, legacy, or distributive share, is allowed or payment thereof directed, or by which such allowance or direction is refused. Sixth, From an order made in the settlement of an executor, administrator, or guardian. Seventh, And from any other final judgment or order made in any case, civil or criminal.

SEC. 275. All appeals provided for in this act, from the probate court, shall be taken in the same manner as provided for in article 8th of "an act entitled an act in relation to executors and administrators."

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TITLE X.

CHAPTER I.

WRITS OF ERROR.

SEC. 276. Every final judgment, order, or decision of a district court, except in chancery, may be examined upon a writ of error in the same court for error in fact, in the supreme court for error in law.

SEC. 277. Every such writ shall be prosecuted within six months and not after. But if the party entitled to have such writ shall be absent from the Territory, and shall not have been personally served with process, nor appeared to the action, or if such party be an infant, or married woman, or imprisoned, or insane, then such writ may be prosecuted within two years after the removal of such disability and not after: *Provided*, That absence from the Territory shall not entitle the party to a longer time than five years. The time limited shall include the day on which the judgment is rendered, or the order or decision is made, or on which the disability ceases.

SEC. 278. A writ of error shall be deemed to have issued on the day on which the plaintiff in error shall file in the office of the clerk of the district court where the record is, a written undertaking, executed by two sureties, to be approved by the clerk, for the payment of all the costs of such proceeding, and it shall not be necessary in any stage of the proceedings actually to sue out the writ of error.

SEC. 279. On the filing of such undertaking, the clerk shall issue a notice to the defendant in error, under the seal of the court, specifying the court in which and the time when he is to appear to protect his interests, and if the *præcipe* direct the writ of error to be made returnable to the supreme court, he shall send thither a transcript of the record, under the seal of the court. Such notice may be as nearly as applicable in the following form:

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TERRITORY OF MONTANA, }
County of ——— }

To C—— D———.

You are hereby notified that A—— B——— has sued a writ of error, from the supreme court, to reverse the decision of the district court of said county, given in your favor against the said A—— B——— at the ——— term of 18——, and unless you appear in the said supreme court on the ——— Monday of ———, 18——, the cause will be heard in your absence.

Witness the seal of the district court the —— day of ———, 18——.

[SEAL.] E—— F———,
Clerk.

SEC. 280. The notice may be served on the defendant in error or his attorney of record, by any sheriff within his county, and shall be by delivering a copy thereof, or it may be served by any other disinterested person, and the return of the sheriff endorsed thereon, or the affidavit of such other disinterested person, shall be evidence thereof, and if served ten days before the return day, the cause may be heard at that term. If returned not found, the court of error may make such order for the publication as shall appear most likely in the particular case to convey knowledge of the proceedings to the defendant in error, and may then proceed as if the notice had been personally served.

SEC. 281. The transcript shall contain a copy of the writ and return, the pleadings, the journal entries and the bills of exception, the exception and return, and such other matters as the court or judge shall have ordered to be made a part of the record Either party may have a *certiorari* to supply any diminution of the record.

SEC. 282. The court of error may fix the time for assigning errors and filing joinders. If errors in law be assigned, no joinders shall be necessary. One or more errors in fact may be assigned, and the defendant may put in the common joinder as a demurrer thereto, or may traverse, or confess and avoid the facts assigned for error, and a separate issue shall be made in each.

SEC. 283. The judgment, or other matter complained of, may be affirmed, or may be reversed, or set aside, in whole or in part, or may be modified, or a different judgment or order may be substituted for that complained of, and the cause may be remitted to

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the district court for such further proceedings as the supreme court by mandate shall direct. Executions may issue from the supreme court, or its judgments may be executed by the district court on mandate for that purpose.

SEC. 284. If the undertaking for costs contain an additional undertaking to pay the judgment if affirmed, and damages, or any new or modified judgment that may be given against the plaintiff in error, then all further proceedings by way of executing the judgment shall forthwith cease, until further order of the court of error. In such case, if the judgment be affirmed or modified, or any new judgment be given against the plaintiff in error, damages may be awarded to the defendant in error, not exceeding ten per cent. upon the amount of the judgment, exclusive of interest and costs, if it manifestly appear that the proceeding was without probable cause, and merely for delay; and in case where judgment is rendered against the plaintiff in error, judgment shall also be rendered against the sureties in the undertaking to the extent of their liability, and execution shall issue against them accordingly.

SEC. 285. The undertaking for a writ of error may be in the following form:

A——— B———, } District Court, County of ———,
vs. Judgment ———,
C——— D———, } at ——— term, 18—.

We promise to pay all costs awarded against A——— B———, on his writ of error in this cause,—and also the judgment if affirmed,—and the damages, or any new or modified judgment that may be given against him.

E——— F———,
G——— H———.

SEC. 286. If after the undertaking be filed either party shall die, or, being a single woman, shall marry, the proper persons may, on motion, be made parties, and the causes shall proceed to judgment.

SEC. 287. Any person who may be a party or privy in any judgment, order, or decision, may prosecute a writ of error to reverse the same to the benefit of all parties and privies therein, and no other party or privy shall afterwards prosecute a writ of error for the same cause.

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SEC. 288. The reversal of a judgment order or decision shall not effect the title to the property sold upon an execution issued upon such judgment order or decision if such property be purchased at the sale by a stranger, but if purchased by the judgment creditor, the plaintiff in error may bring an action for the recovery of the same, and the court may award restitution or render such other judgment as justice shall require.

SEC. 289. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

SEC. 290. Whenever on trial of an action at law in the district court it shall be found to turn upon important or doubtful principles of law, the court may direct a special verdict to be found, and in all cases the parties may agree upon the facts, and such agreement in writing, signed by the parties or their attorneys, shall be made part of their record; and all questions of law arising upon special verdicts, agreed cases, motions for new trials, and all others in any manner arising in the district courts in law or equity, may be adjourned into the supreme court for decision, and the supreme court may give judgment or remand the cause, or make any order according to the law and justice of the case.

TITLE XI.

CHAPTER I.

MISCELLANEOUS PROVISIONS.

SEC. 291. When a judgment is reversed against two or more of several persons jointly indebted upon an obligation, those who were not originally served with the summons and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as if they had been originally served with the summons.

SEC. 292. The summons as provided in the last section shall describe the judgment and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner and returnable within the same time as the original summons. It shall not be necessary to file a new complaint.

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SEC. 293. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

SEC. 294. Upon such summons the defendant may answer upon the return day thereof, denying the judgment or setting up any defence which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitation.

SEC. 295. If the defendant in his answer deny the judgment, or set up any defence which may have arisen subsequently, the summons, with the affidavit affixed, and the answer, shall constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer, shall constitute such written allegations.

SEC. 296. The issue found may be tried as in other cases, but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.

CONFESSION OF JUDGMENT.

SEC. 297. A judgment of confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner herein prescribed.

SEC. 298. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect: First, It shall authorize the entry of judgment for a specific sum. Second, If it be for money due or to become due, it shall state concisely the fact out of which it arose, and shall show that the sum confessed is due or to become due. Third, If it be for securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same. Fourth, That such con-

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fession is not made for the purpose of defrauding the creditors of the defendant, but the sum confessed is a *bona fide* existing debt owing from the defendant to plaintiff, due or to become due at some specified time. The statement shall be filed with the clerk, and the court may thereupon enter judgment for the amount confessed, and the same shall have the same force and effect as other judgments in such courts; and when the debt for which judgment is confessed is not due, the judgment shall state when the same will become due, and execution shall not issue thereon until such debt shall have become due, unless the defendant otherwise direct.

CHAPTER III.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

SEC. 299. Parties to a question in difference which might be a subject of civil action, may without action agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court that would have jurisdiction of the same if an action had been brought, but it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon as if an action were depending.

SEC. 300. Judgment shall be entered as in other cases, but without costs for any proceeding prior to the trial. The submission and other papers used in the hearing of said cause shall be filed with the clerk of the court where judgment is entered.

SEC. 301. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER IV.

ARBITRATIONS.

SEC. 302 Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or

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for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

SEC. 303. The submission to arbitration shall be in writing, and may be to one or more persons.

SEC. 304. It may be stipulated in the submission, that it be entered as an order of the district court, for which purpose it shall be filed with the clerk of such court in the district where the parties or one of them resides. The clerk shall thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered the submission shall not be revoked except by the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

SEC. 305. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

SEC. 306. All the arbitrators shall meet and act together during the investigation, but when met a majority may determine any question. Before acting, they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

SEC. 307. The award shall be in writing, and signed by the parties or a majority of them, and delivered to the parties. When a submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register after the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the order book, and shall thereupon have the effect of a judgment.

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SEC. 308. The court upon motion may vacate the award upon either of the following grounds, and may award a new hearing before the same arbitrators, or not, in its discretion: First, That it was procured by corruption or fraud. Second, That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or refusing to hear pertinent evidence, or otherwise acted improperly in a manner in which the rights of the party were prejudiced. Third, That the arbitrators exceeded their powers in making their award, or that they refused or improperly omitted to consider a part of the matter submitted to them, or that the award is indefinite or cannot be performed.

SEC. 309. The court may on motion correct or modify the award, when it appears: First, That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein. Second, When a part of the award is upon matters not submitted which can be separated from other parts and does not affect the decision on the matter submitted. Third, When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

SEC. 310. The decision upon the motion shall be subject to appeal, or writ of error, in the same manner as an order which is subject to appeal or writ of error in civil actions, but the judgment entered before motion is made shall not be subject to appeal or writ of error.

SEC. 311. If a submission be revoked and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER V.

OFFER TO CONFESS JUDGMENT.

SEC. 312. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken for the sum or property, or to the effect therein specified. If the plaintiff accept the offer and give notice thereof in five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and judgment may thereupon be entered

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accordingly. If the notice of acceptance be not given within the time limited, the offer shall be deemed withdrawn, and shall not be given in evidence, and if the plaintiff fail to recover a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

CHAPTER VI.

ACTIONS FOR DEBTS NOT DUE.

SEC. 313. Actions may be commenced on any note, bill, bond, or other instrument in writing, for the payment of money, or for the delivery of any gold dust, or gold or silver bullion, before the same shall have become due, when it shall appear by the affidavit of the plaintiff, or some one in his behalf: First, That the defendant is leaving, or is about to leave, this Territory, taking with him property, moneys, rights, credits, or other articles that might be subject to the payment of the debt. Second, That the defendant is disposing of his property, or is about to dispose of property subject to execution, for the purpose of defrauding his creditors. The affidavit shall also state the nature of the indebtedness and the amount due the plaintiff. The affidavit shall be filed with the complaint.

SEC. 314. Attachments may be issued in such cases under the same rules and subject to like restrictions as provided for in other cases.

SEC. 315. The defendant may by plea put in issue the matters alleged in the affidavit herein required, and if the defendant fail to substantiate them, the suit shall abate.

SEC. 316. The court, or a judge thereof, or a probate judge, may, on motion, after reasonable notice to the plaintiff, dismiss such action if it appear that there was no sufficient grounds for the commencement of the same.

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TITLE XII.

CHAPTER I.

Of Witnesses.

Sec. 317. No person shall be disqualified as a witness in any civil action or proceeding, by reason of his interest in the event of the same as a party or otherwise, or by reason of his conviction of a crime, but such interest or conviction may be shown for the purpose of affecting his credibility.

Sec. 318. Any party to a civil action or proceeding may compel any adverse party or person for whose benefit such action or proceeding is instituted, prosecuted or defended at the trial or by deposition, to testify as a witness, in the same manner and subject to the same rules as other witnesses.

Sec. 319. No party shall be allowed to testify by virtue of anything herein contained, where the adverse party is an executor or administrator of a deceased person, when the facts to be proved transpired before the death of such deceased person.

Sec. 320. The following persons shall be incompetent to testify: First, Persons who are of an unsound mind at the time of their production for examination. Second, Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly, but the court in its discretion may allow such children to testify, and the facts herein enumerated shall go to their credibility. Third, Husband or wife for or against each other, or concerning any communication made by one to the other during the marriage, whether called as a witness while that relation existed or afterwards. Fourth, An attorney concerning any communication made to him by his client in that relation, or his advice thereon, without the client's consent. Fifth, A clergyman or priest concerning any confession made to him, in his professional character, in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession. Sixth, A negro, Indian, or Chinaman, where the parties to the action are white

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persons, but if the parties to an action or either of the parties is an Indian, negro, or Chinaman, a negro may be introduced as a witness against such negro, an Indian against such Indian, or a Chinaman against such Chinaman. A negro within the meaning of this act is a person having one-eighth or more of negro blood, an Indian is a person having one-half or more of Indian blood, and a Chinaman is a person having one-half or more Chinese blood.

SEC. 321. The clerks of the district and probate court shall, on application of any person having a cause or any matter pending in the court, issue a subpœna for witnesses, under the seal of the court, inserting all the names required by the applicant in one subpœna, which may be served by the sheriff, or by the party, or by any other person. When a subpœna is not served by the sheriff, proof of service shall be shown by affidavit; where served by the sheriff, by his certificate; but no costs of service shall be allowed except when served by the sheriff.

SEC. 322. The subpœna shall be issued as follows: First, To require attendance before a court or at a trial of an issue therein. Second, To require attendance out of court before a judge, justice, or any other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory. It shall be issued by the judge, justice, or other officer before whom the attendance is required. Third, To require attendance before a commissioner appointed to take testimony by a court of any other state or territory.

SEC. 323. The service of the subpœna shall be by reading the same to the witness, or by leaving a copy at his usual place of abode, but such copy need not contain the name of any other witness.

SEC. 324. No person shall be compelled to attend as a witness unless his fees for travel to and from the place of trial and one days' attendance there is either paid or tendered to him at the time of the service of the subpœna if demanded by him; and the person making the service shall state in the return what amount of fees was paid or tendered, and if not paid or tendered, whether a demand for the same was made or not.

SEC. 325. No person shall be compelled to attend as a witness out of the county in which he resides unless his residence is less than thirty miles from the place of trial.

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SEC. 326. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such officer.

SEC 327. It shall be the duty of a witness duly served with a subpœna to attend at the time appointed, with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and unless sooner discharged, to remain until the testimony is closed.

SEC. 328. A witness shall answer questions legal and pertinent to the matter in issue though his answers may establish a claim against himself; but he need not give an answer that would have a tendency to subject him to punishment for a felony, nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue or to a fact from which the fact in issue would be presumed; but a witness shall answer as to the fact of his previous conviction for felony.

SEC. 329. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe to an affidavit or deposition when required, may be punished as contempt by the court or officer issuing the subpœna or requiring the witness to be sworn, and if the witness be a party, his complaint may be dismissed or his answer stricken out.

SEC. 330. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars and all damages he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

SEC. 331. In case of the failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and other requirement of the law, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance is required.

SEC. 332. If the witness be a prisoner confined in jail or prison within this Territory, for any other cause than a sentence for felony, an order for his examination in prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made as follows: First, by the court itself in which the action or proceeding is pending. Second, By a judge of the supreme court, district court, or pro-

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bate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

SEC. 333. Such order can only be made upon affidavit showing the nature of the action or proceeding, the testimony expected by the witness, and its materiality.

SEC. 334. If the witness be imprisoned in the county where the action or proceeding is pending, and for cause other than a sentence for felony, his production may be required; in all other cases his examination when allowed shall be taken upon deposition.

SEC. 335. Every person served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other person, in a cause where the disobedience of the witness may be punished as a contempt, shall be exonorated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

CHAPTER II.

ON AFFIDAVITS.

SEC. 336. An affidavit to be used before any court, judge, or officer of this Territory, may be taken before any judge, or clerk of any court, or any justice of the peace, or notary public, of this Territory.

SEC. 337. An affidavit taken in another state or territory of the United States, to be used in this Territory, shall be taken before a commissioner appointed by the governor of this Territory to take affidavits and depositions in such other state or territory, or before a judge of record having a seal.

SEC. 338. An affidavit taken in a foreign country, to be used in this Territory, shall be taken before an ambassador, minister, or consul of the United States, or before any judge of a court of record having a seal, in such foreign country.

SEC. 339. When an affidavit is taken before a judge of a court of any other state or territory, or a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof.

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CHAPTER III.

DEPOSITIONS TAKEN IN THIS TERRITORY.

SEC. 340. The testimony of a witness of this Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein in the following cases: First, When the witness resides out of the county in which his testimony is to be used. Second, When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required. Third, When the witness is sick, too infirm to attend the trial, or there is an apprehension that he will die before the time of trial.

SEC. 341. Either party may have the deposition taken of a witness in this Territory, before any judge or clerk, or any justice of the peace or notary public in this Territory, on serving upon the adverse party previous notice of the time and place of examination, and showing that the case is one mentioned in the last section, at any time after the service of the summons or appearance of the defendant, or after the completion of notice by publication, and at any time thereafter. When the defendant has not appeared, the notice may be served on the clerk of the court where the action is pending. Such notice shall be at least five days, and one additional day for every twenty-five miles of the distance from the residence of the party to the place of examination, unless for a cause shown a judge by order prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

SEC. 342. Either party may attend at such examination, and put such questions, direct and cross, as may be proper. The deposition when completed shall be carefully read to the witness and corrected by him in any particular if desired, it shall then be subscribed by the witness, and a certificate attached by the officer taking the same, that the witness was sworn, the time and place of taking the deposition, and whether or not the parties were present, and shall then enclose it in an envelope or wrapper, seal it, and direct it to the clerk of the court in which the action is pending, and endorse on the envelope or wrapper the names of the parties to

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the action. Such deposition may be sent through the mail or by some safe private opportunity, or by any person by which the parties in writing may agree. Such deposition, when so taken, may be used by either party upon the trial, or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if a party attend at the examination, such party shall make no objection at the trial to the form of an interrogatory unless the same was stated at the time of the examination and noted in the deposition. All objections to a deposition shall be taken before the commencement of the trial.

SEC. 343. It shall appear at the trial that the cause for taking the deposition still exists or that such witness is dead.

SEC. 344. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, or in any subsequent action between the same parties for the same cause, and shall then be deemed the evidence of the party reading it.

CHAPTER IV.

DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

SEC. 345. The testimony of a witness out of this Territory may be taken by deposition in an action at any time after the service of the summons, or the appearance of the defendant, or the publication of notice to a non-resident, and in a special proceeding at any time after a question of fact has arisen therein.

SEC. 346. The deposition of a witness out of this Territory shall be taken upon commission issued by the clerk of the court where the action or proceeding is pending, under the seal of the court, on the application of either party. It shall be issued to some person authorized to take depositions at the place where the depositions are to be taken, and shall specify the action or proceeding in which the deposition is to be used, the time and place of the taking of the same, and shall authorize such person to take such deposition.

SEC. 347. The party taking such deposition shall serve upon the opposite party a notice stating the time and place of the taking of such deposition. Such notice shall be served by delivering a copy thereof to the adverse party or his attorney a sufficient length

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of time to enable such adverse party to travel from his residence, by the most usually travelled route, to the place of taking such deposition, and ten days in addition. When such adverse party has no attorney of record, and his place of residence is unknown to the party, such notice may be filed with the clerk of the court in which the action is pending the time herein specified before the taking of the deposition.

SEC. 348. Each party may attend at the taking of such deposition, and put such questions as may be legal and proper. Such deposition when taken shall be signed by the witness.

SEC. 349. The officer taking the deposition shall administer an oath to the witness, and when the deposition is completed he shall enclose the same in an envelope or wrapper, together with the commission issued to him, and the notice or a copy of the notice served upon the adverse party, and endorse upon the envelope or wrapper the names of the parties to the action or proceeding, and seal the same, and direct it to the clerk of the court in which the action is pending. Such deposition may be transmitted by mail, or by any person that the parties in writing may agree upon.

SEC. 350. The officer taking such deposition shall append to the same a certificate, under seal if he have one, showing, First, The time and place of taking such deposition; Second, That the witness was sworn according to law; Third, Whether or not the parties were present in person or by attorney.

SEC. 351. If such deposition be taken by an officer not having a seal, a certificate of a clerk of a court of record having a seal shall be appended, showing that the officer taking such deposition is authorized by the laws of the place where the deposition is taken to take depositions, and that the person taking the same is authorized to exercise the duties of such office.

SEC. 352. Such depositions shall be subject to the same rules of construction as depositions taken in this Territory.

SEC. 353. A trial or other proceeding shall not be postponed by reason of a commission not returned, except on evidence satisfactory to the court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

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CHAPTER V.

PROCEEDINGS TO PERPETUATE TESTIMONY.

SEC. 354. The testimony of a witness may be taken and perpetuated as provided in this chapter of this act.

SEC. 355. The applicant shall produce to the district judge, or to a probate judge, an affidavit stating: First, That the applicant expects to be a party to an action in a court of this Territory, and in such case the name or names of the persons whom he expects will be adverse parties; or, Second, That the proof of some fact or facts is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which may hereafter be anticipated, or if anticipated he may not know the parties to the suit; and, Third, The name or names of the witness or witnesses to be examined at his or their place of residence, and a general outline of the facts expected to be proved, the judge to whom such petition is presented shall make an order allowing the examination and prescribing the notice to be given, which notice, if the parties are known and reside in this Territory, shall be personally served on them, and if unknown such notice shall be served on the clerk of the county where the property to be affected by such evidence is situated, and a notice thereof to be published in some newspaper to be designated by the judge making the order.

SEC. 356. Upon proof of the service of the notice as provided in the last section, it shall be the duty of the judge before whom the depositions are ordered to be taken, to proceed to take the depositions of the witnesses named in such petition upon the facts therein set forth, and the taking of the same may be continued from time to time in the discretion of the judge.

SEC. 357. The examination shall be by question and answer, unless the parties otherwise agree. The depositions, when taken, shall be carefully read to and subscribed by the witness, then certified to by the judge, and immediately thereafter filed in the office of the clerk of the district court of the county where the same was taken, together with the order for the examination, the petition on which the same was granted, and the proof of service of notice.

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SEC. 358. The affidavits or proof filed with the deposition or certified copies thereof, shall be *prima facie* evidence of the facts therein stated.

SEC. 359. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the fact which such deposition prove, upon proof of the death or insanity of the witness or witnesses, or of his or her inability to attend the trial by reason of age, sickness, or settled infirmity, the deposition or depositions, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the examination.

CHAPTER VI.

OATHS AND AFFIRMATIONS.

SEC. 360. Every court of this Territory, every judge or clerk of any court, every justice of the peace, every notary public, and every officer authorized to take testimony or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

SEC. 361. When a person is sworn who believes in any christian religion, he may be sworn according to the peculiar ceremonies of his religion if there be any such. In other cases, they shall be sworn with uplifted hand to tell the truth, the whole truth, and nothing but the truth, as they shall answer to God.

SEC. 362. Any witness who desires it, may, at his option, instead of taking an oath, make his solemn affirmation, or declaration, that he will tell the truth, the whole truth, and nothing but the truth, in the matter pending, and that he does so under the penalties and pains of perjury. A false affirmation, or declaration, shall be deemed perjury, equally with a false oath.

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CHAPTER VII.

WRITTEN EVIDENCE AND INSPECTION OF DOCUMENTS.

SEC. 363. Any court in which an action is pending, or a judge thereof, or a probate judge, may, upon notice, order either party to give to the other within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the court may exclude the book, document, or paper, from being given in evidence, or as wanted as evidence by the party applying; may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing, for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness.

SEC. 364. There shall be no evidence of the contents of a writing other than the writing itself, except in the following cases: First, When the original has been lost or destroyed, in which case, proof of the loss or destruction shall first be made. Second, When the original is in the hands of the party against whom the evidence is offered, and he fails to produce it after reasonable notice. Third, When the original is a record or other document in the custody of a public officer. Fourth, When the original has been recorded and a certified copy of the record is made evidence by statute. Fifth, When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the evidence sought from them is only the general result of the whole.

SEC. 365. The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

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SEC. 366. A judicial record of this Territory, or of the United States, may be proved by the production of the original or copy thereof certified by the clerk or other person having the legal custody thereof under the seal of the court to be a true copy of such record.

SEC. 367. The records and judicial proceedings of the courts of any State or Territory of the United States may be proved or admitted in the courts of this Territory, by the attestation of the clerk under the seal of the court (if there be a seal), together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form.

SEC. 368. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk, with the seal of the court annexed (if there be a seal and clerk), or by the legal keeper of the record, with the seal of his office annexed (if there be a seal), to be a true copy of such record, together with a certificate of a judge of the court that the person making the certificate is the clerk of the court or legal keeper of the record, and in either case, that the signature is genuine and the certificate is in due form, and also together with the certificate of the minister or ambassador of the United States or of a consul of the United States in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signature of the judge and clerk or other legal keeper of the record.

SEC. 369. A copy of a judicial record of a foreign country shall also be admissible in evidence upon proof: First, That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it. Second, That such original was in the custody of the clerk of the court or other legal keeper of the same. And Third, That the copy is duly attested by a seal which is proved to be the seal of the court where the record remains if it be the record of a court, or (if there be no such seal, or if it be not a record of a court) by the signature of the legal keeper of the original.

SEC. 370. Printed copies in volumes of statutes, codes, or other written law enacted by any other State or Territory, or foreign government, purporting or proved to have been published by authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such State

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Territory, or government, shall be admitted by the courts and officers of this Territory on all occasions as presumptive evidence of such laws.

TITLE XIII.

CHAPTER I.

WRIT OF CERTIORARI OR REVIEW.

SEC. 371. The writ of *Certiorari* may be denominated a writ of review.

SEC. 372. This writ may be granted, on application, by any court of this Territory, except a justice's court. The writ shall be granted in all cases where an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor in the judgment of the court any other plain, speedy and adequate remedy.

SEC. 373. The application shall be made on affidavit by the party beneficially interested and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

SEC. 374. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

SEC. 375. The writ of review shall command the party to whom it is directed, to certify fully to the court issuing the writ at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party in the meantime to desist from the further proceedings in the matter to be reviewed.

SEC. 376. If a stay of proceedings be not mentioned, the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted in the sound discretion of the court,

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but if omitted the power of the inferior court or officer shall not be suspended nor the proceedings stayed.

SEC. 377. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

SEC. 378. The review on this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer, has regularly pursued the authority of such tribunal, board, or officer.

SEC. 379. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties or such of them as shall attend for that purpose, and may thereupon give judgment, either affirming, or annulling, or modifying the proceedings below.

SEC. 380. A copy of the judgment required by the clerk shall be transmitted to the inferior tribunal, board, or officer, having the custody of the record or proceeding certified up.

SEC. 381. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall be entered by the clerk of such inferior tribunal, board, or officer, in the records of such tribunal, board, or officer. If the proceeding be had in any other than the superior court, an appeal may be taken in the same manner, and upon the same terms, as from a judgment in a civil action.

CHAPTER II.

WRIT OF MANDATE.

SEC. 362. The writ of *mandamus* may be denominated the writ of mandate.

SEC. 383. It may be issued by any court in this Territory, except justice's court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the enjoyment and use of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

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SEC. 384. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit on the application of the party beneficially interested.

SEC. 385. The writ shall be either alternative or peremptory. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a specified time and place why he has not done so. The peremptory writ shall be similar in form, except the words requiring the party to show cause why he has not done as commanded shall be omitted and a return day inserted.

SEC. 386. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued, but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of application when given shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

SEC. 387. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served, may show cause, by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

SEC. 388. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation on which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for the trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess damages which the applicant may have sustained, in case they find for him.

SEC. 389. On the trial, the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may

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countervail it by proof, either in direct denial or by way of avoidance.

SEC. 390. If either party be dissatisfied with the verdict of the jury, he may move for a new trial by filing reasons therefor. The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried, either in term or vacation. If a new trial be granted, a jury shall within five days thereafter, unless the parties agree to a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

SEC. 391. If no notice of a motion for a new trial be given, or if given be denied, the clerk within five days after the rendition of the verdict, or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict, attached to the order of trial, after which either party may bring on the argument of the application upon reasonable notice to the adverse party.

SEC. 392. If no answer be made, the case shall be heard on the papers of the applicant. If answer be made which does not raise a question of fact necessary to be tried by a jury, but only such matters as may be explained or avoided by a reply, the court may in its discretion grant time for replying. If the answer or answer and reply raise only questions of law, or put in issue immaterial statements not affecting the substantial rights of the parties, the court shall proceed to hear or fix a day for hearing the arguments of the case.

SEC. 393. If a judgment be given for the applicant, he shall recover the damages which he shall have sustained as found by the jury, or as may be determined by the court or referees upon a reference, to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay.

SEC. 394. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court.

SEC. 395. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appears to the court that any member of such tribunal, corporation, or board, or such person upon whom the writ has been personally

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served has, without just excuse, refused or neglected to obey the same, the court may, on motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any order necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a judge or officer who draws a salary from the Territory or county, a certified copy shall be forwarded to the auditor or county treasurer, as the case may be, and the amount thereof may be retained from the salary of such judge or officer. Such judge or officer, for this wilful disobedience, shall also be deemed guilty of a misdemeanor in office.

TITLE XIV.

Contempts and their Punishments.

Sec. 396. The following acts or omissions shall be deemed contempts: First, Disorderly, contemptuous, or insolent behavior toward the judge while holding court or engaged in his judicial duties at chambers, or towards referees or arbitrators whilst sitting on a reference or arbitration tending to interrupt the due course of a trial, reference, or arbitration, or other judicial proceeding. Second, A breach of the peace, boisterous conduct, or violent disturbance in presence of the court or its immediate vicinity tending to interrupt the due course of a trial or other judicial proceeding. Third, Disobedience or resistance to any lawful writ, order, rule, or process issued by the court or judge at chambers. Fourth, Rescuing any person or property in the custody of an officer by virtue of an order or process of such court or judge at chambers.

Sec. 397. When a contempt is committed in the immediate view of the court or judge at chambers, it may be punished summarily. When the contempt is not committed in the immediate view or presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

Sec. 398. An attachment may be issued by an order of the court for the arrest of the person accused, and that he be held to

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bail in the sum specified therein for his appearance at a time to be specified.

SEC. 399. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time.

SEC. 400. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act shall be specified in the warrant of commitment; in all other cases of contempt the court or judge may impose a fine not exceeding five hundred dollars and imprisonment not exceeding five days.

TITLE XV.

OF COSTS.

SEC. 401. Costs shall be allowed to the plaintiff, upon judgment in his favor in the following cases: First, In an action for the recovery of real property. Second, In an action to recover possession of personal property when the value amounts to fifty dollars or over, such value to be determined by the jury, court, or referee by whom the action is tried. Third, In an action to recover money or damages where the plaintiff recovers fifty dollars or over. Fourth, In a special proceeding in the nature of an action.

SEC. 402. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within the Territory, but the disbursement of the plaintiff shall be allowed to him in each action.

SEC. 403. Costs shall be allowed to the defendant upon a judgment in his favor in actions for the recovery of real or personal

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property, in actions for the recovery of money, and in a special proceeding in the nature of an action.

SEC. 404. In other actions than those hereinbefore mentioned, costs may be allowed or not, and if allowed may be apportioned between the parties on the same or adverse sides in the discretion of the court.

SEC. 405. If any defendant defend in his own interest alone, if he recover judgment he shall recover costs.

SEC. 406. In the following cases the costs of an appeal or writ of error shall be in the discretion of the court: First, When a new trial is ordered. Second, When the judgment is modified.

SEC. 407. The fees of referees shall be ten dollars to each for every day spent in the business of reference, and the parties shall not agree upon any other rate of compensation, nor shall any other rate of compensation be allowed by the courts.

SEC. 408. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed in the discretion of the court or referee as a condition of granting the same.

SEC. 409. When in action for the recovery of money only the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and deposited in court for the plaintiff the amount so tendered, and the allegation found to be true, the defendant shall recover costs.

SEC. 410. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs may be recovered as in an action by or against a person prosecuting or defending in his own right; but costs shall by the judgment be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally for mis management or bad faith in the prosecution or defence.

SEC. 411. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution or in such manner as the court may direct, according to the nature of the case.

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SEC. 412. The party entitled to recover costs, and claims the same, shall deliver to the clerk of the court within two days after the entry of judgment a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum shall be verified by the party, or some one in his behalf, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

SEC. 413. The clerk shall include in the judgment entered up by him the costs, per centage allowed, and any interest on the verdict from the time it was rendered.

SEC. 414. When the plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges that may be awarded against such plaintiff may be required by the defendant; when required, all proceedings in the action shall be stayed until an undertaking, with sufficient sureties, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the process of the action, not exceeding three hundred dollars. A new or an additional undertaking may be ordered by the court or judge upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be filed.

SEC. 415. Each of the sureties on the undertaking mentioned above shall annex to the same an affidavit that he is a resident within the county and is worth double the amount specified in the undertaking over and above all just debts and liabilities exclusive of property exempt from execution.

SEC. 416. If the undertaking be not filed within the time limited by the court, the action may on motion be dismissed.

TITLE XVI.

MOTIONS, ORDERS, AND SERVICE OF PAPERS.

SEC. 417. Every direction of court or judge made or entered in writing and included in a judgment is denominated an order. An application for an order is a motion.

SEC. 418. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district.

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SEC. 419. When a written notice of a motion is necessary, it shall be given, except as otherwise provided, five days before the time appointed for the hearing, if the court is held in the same district where both parties reside, otherwise ten days; but the court or judge, or a probate judge, may prescribe a shorter time.

SEC. 420. When a notice of a motion is given, or an order to show cause is made returnable before a judge out of court, and at a time fixed for the motion or the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge before whom it might originally have been brought.

SEC. 421. When notices or other papers are required to be served on the party or attorney, the same shall be served by delivering a copy thereof to such party or attorney, or by leaving a copy of the same at the usual place of business or place of abode of such party, or the office or place of abode of such attorney, between the hours of eight in the morning and six in the evening.

SEC. 422. Service may be made by mail where the person making the service and the person on whom the service is to be made reside in different places, between which there is a regular communication by mail. In case of service by mail, the notice or other paper shall be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence or post office address, and the postage paid, and in such case the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and the place of address.

SEC. 423. All notices or other papers which it is necessary to serve upon a party, except original or final process, or proceeding to bring a party into court for contempt, may be served either upon the party or his attorney, or one of several attorneys in the action.

SEC. 424. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and as effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

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TITLE XVII.

MISCELLANEOUS PROVISIONS.

SEC. 425. The supreme court may make rules not inconsistent with the constitution and laws of this Territory for its own government and the government of the district courts, and the probate court may make such rules for its government, but such rules shall not be in force until thirty days after their adoption and publication. If the supreme court fail to make rules for the government of the district courts, the district courts may make their own rules, and until the meeting of the supreme court such district courts may make their own rules, to be published as above provided.

SEC. 426. Successive actions may be maintained upon the same contract or transaction whenever after the former action a new cause of action arise therefrom.

SEC. 427. Whenever two or more actions are pending at one time, between the same parties and in the same court, upon cause of action which might have been joined, the court may order the actions to be consolidated into one.

SEC. 428. An action may be brought by one person against another for the purpose of determining an adverse claim which the latter makes against the former for money or property upon alleged obligation, and also against two or more persons for the purpose of compelling one to satisfy a debt due to the other for which the plaintiff is bound as security.

SEC. 429. When there are three referees or arbitrators all shall meet, but two of them may do any act which might be done by all.

SEC. 430. The time within which an act is to be done as provided in this act, shall be computed by excluding the first and including the last day; if the last day be Sunday, or any other day on which ordinary legal business cannot be transacted, it shall be excluded.

SEC. 431. In an action brought against a sheriff for an act done by virtue of his office, if he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment

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received therein shall be sufficient evidence of his right to recover against such sureties; and the court or judge, in vacation, may on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

SEC. 432. Words used in this act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; and words used to include the masculine gender shall include the feminine gender; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include, when the person cannot or is unable to write, his name being written near it and witnessed by a person who writes his own name as a witness.

SEC. 433. In all cases where an undertaking by the provisions of this act is required, it shall be the duty of the person taking the same to require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking over and above their just debts, liabilities, and property exempt by law from execution. *Provided*, That when the amount specified in the undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

SEC. 434. The court or judge thereof in which an action is pending may, upon the application of either party, upon reasonable notice to the other, appoint a receiver to take charge of any property in dispute and make such disposition of the same as the court or judge shall direct, under such rules and prescriptions as to bonds as the court may think proper. The court shall also have power to make such application of the proceeds of any property, or other proceeds in the hands of any receiver appointed by any inferior power, belonging to the parties in the action, as the court may think just and proper.

SEC. 435 A receiver appointed as mentioned in the last section, shall keep an accurate account of all proceeds of any property or business that may come into his hands by virtue of his trust, and all amounts paid out by him for the expense of keeping any property or carrying on any business, and shall pay over the same

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according to the order of the court. Such receiver shall be allowed such compensation for his services as the court may think proper, to be paid out of any money in his hands belonging to the parties in action.

SEC. 436. Writs of *certiorari* and *mandamus* may be issued in the cases prescribed in this act by a judge of the supreme court, district court, or probate court, in vacation, and may in the discretion of the judge issuing the writ be made returnable, and a hearing may be had thereon on the return day in vacation.

SEC 437. Whenever property has been taken by an officer under a writ of attachment, in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, or a probate judge, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party or his attorney in case such party has been personally served with summons in the action.

SEC. 438. A copy of any record or document or paper in the custody of a public officer of this Territory or of the United States within this Territory, certified under the official seal, or verified by the oath of such officer, to be a true, full and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this Territory in the like manner and with the like effect as the original could be if produced.

SEC. 439. When two or more persons associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; but the judgment in such cases shall bind only the joint property of the associates.

SEC. 440. All decisions given upon an appeal upon questions of law alone, in any appellate court in this Territory, shall be given in writing, with the reasons therefor, and filed with the clerk of the court.

SEC. 441. A defendant against whom an action is pending upon a contract or specific personal property, may at any time before answer, upon affidavit that a person not a party to the action,

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makes against him, without any collusion with him, a demand upon the same contract or for the same property, upon due notice to such person and the adverse party, apply to the court to substitute such person in his place and discharge him from liability to either party, on his depositing in the court the amount claimed on the contract, or delivering the property or its value to such person as the court may direct, and the court may in its discretion make the order.

SEC. 442. Any person shall be entitled to intervene in an action who has an interest, in the matter in litigation, in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action between other persons, either in joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant.

SEC. 443. Any third person may intervene, either before or after issue has been joined in the cause.

SEC. 444. The intervention shall be by petition or complaint, filed in the court in which the action is pending, and it must set forth the grounds upon which the intervention rests. A copy of the petition or complaint shall be served upon the parties to the action against whom anything is demanded, who shall answer as if it were an original complaint in the action.

SEC. 445. The court shall determine upon the intervention at the same time that the action is decided. If the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention.

SEC. 446. On the trial of any action in a court of record, at the request of either party, the court may in its discretion appoint a competent person to take down the testimony in writing.

SEC. 447. The party postponing a trial in any court of record, shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance be then taken before any judge or clerk of the court in which the cause is pending, or before any notary public, or other officer authorized to take depositions, as the court may indicate, which shall accordingly be done, and the testimony so taken may be read

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in the trial with the same effect, and subject to the same objections, as if the witness was produced.

SEC. 448. Whenever costs are awarded to a party by an appellate court, such party may have an execution for the same on filing a *remittitur* with the clerk of the court below, and it shall be the duty of such clerk, whenever the *remittitur* is filed, to issue the execution upon application therefor. And whenever costs are awarded to a party by an order of any court, such party may have an execution therefor in like manner as upon a judgment.

SEC. 449. The supreme court, the several district courts, and the several probate courts, of this Territory, shall be courts of record.

SEC. 450. The sittings of every court of justice shall be public, except as provided in the next section.

SEC. 451. In an action for divorce, the court may direct the trial of any issue of fact joined therein to be private, and upon such directions all persons may be excluded except the officers of the court, the parties, their witnesses and counsel.

SEC. 452. Every court shall have power, First, To preserve and enforce order in its immediate presence. Second, To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority. Third, To compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein. Fourth, To control, in furtherance of justice the conduct of its ministerial officers.

SEC. 453. A judge shall not act as such in any of the following cases: In an action or proceeding to which he is a party, or in which he is interested, when he is related to either party by consanguinity or affinity within the third degree, when he has been attorney or counsel for either party in the action or proceeding.

SEC. 454. A judge shall not act as attorney or counsel in a court in which he is a judge, or in an action or proceeding removed therefrom to another court for review, or in any action or proceeding from which an appeal may lie in his own court.

SEC. 455. A judge of the supreme court, or of the district court, shall not act as attorney or counsel in any court, except in an action in which he is a party to the record.

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SEC. 456. A judge, or justice of the peace, shall not have a partner acting as attorney or counsel in any court in this Territory.

SEC. 457. If an application for an order, made to a judge of a court in which the action or proceeding is pending, be refused in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court: *Provided*, That nothing in this section shall be so construed as to apply to motions refused for any informalities in the papers or proceedings necessary to obtain an order.

SEC. 458. A violation of the last section may be punished as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of a court in which the action or proceeding is pending.

SEC. 459. The judges of the supreme court, of the district courts, and of the probate courts, shall have power in any part of the Territory, and justices of the peace within their respective counties shall have power, to take and certify, First, The proof and acknowledgment of a conveyance of real property, or of any other instrument required to be proved or acknowledged. Second, An affidavit to be used in any court of justice in this Territory.

SEC. 460. No action or proceeding in a court of justice shall be affected by a vacancy in the office of all or any of the judges, or by a failure of a term thereof.

SEC. 461. Every written proceeding in a court of justice in this Territory, or before a judicial officer, shall be in the English language, but such abbreviations as are now commonly used in that that language may be used and numbers may be expressed by figures or numerals in the customary manner.

SEC. 462. Each of the following courts, and no others, shall have a seal: First, The supreme court. Second, The district courts. Third, The probate courts.

SEC. 463. The clerk of each court shall keep the seal thereof.

SEC. 464. The seal of the court need not be affixed to any proceeding therein, except, First, To a summons, writ, or subpœna. Second, To the proof of a will, or the appointment of an executor, an administrator, or guardian. Third, To the authentication of a copy of a record, or other proceeding of the court, or of an officer thereof, for the purpose of evidence in another court, and such other cases as may be prescribed by law.

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SEC. 465. The seal may be affixed by impressing it upon the paper, or on a substance attached to the paper and capable of receiving the impression.

SEC. 466. The courts of justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

SEC. 467. No court shall be opened, nor shall any judicial business be transacted, on Sunday, New Year's day, Fourth of July, Christmas day, Washington's birth day, Thanksgiving day, or on a general election, except for the following purposes: First, To give upon their request instructions to a jury then deliberating on their verdict. Second, To receive a verdict or discharge a jury. Third, For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature. Fourth, When it shall appear by the affidavit of the plaintiff, or some one in his behalf, in cases for the recovery of specific personal property, that the defendant is about to conceal, dispose of, or remove such property out of the jurisdiction of the court, an order for taking possession of the same may be issued on any day. Fifth, When an application for a writ of attachment is made, and it shall appear by the affidavit of the plaintiff, or some one in his behalf, that the defendant is about to dispose of, conceal or remove property subject to execution or attachment out of the jurisdiction of the court, a writ of attachment may be issued on any day. When the day fixed for the opening of a court shall fall on any of the days mentioned in this section, the court shall stand adjourned until the next succeeding day.

SEC. 468. Every court of justice, except a justices' court, shall sit at the county seat of the county in which it is held, except as may be otherwise provided by law. No justice of the peace shall hold a court in any other county or city than the one for which he shall have been elected.

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TITLE XVIII.

COURTS OF JUSTICE OF THIS TERRITORY.

SEC. 469. The following shall be the courts of justice of this Territory: First, The supreme court. Second, The district courts. Third, The probate courts. Fourth, The justices' court.

Supreme Court.

SEC. 470. The supreme court shall have appellate jurisdiction in all civil cases where the amount in dispute exceeds one hundred dollars, and in all criminal cases tried in the district courts, and shall hold its sessions at the capital at the times fixed by law.

District Court.

SEC. 471. The Territory shall be divided into three judicial districts.

SEC. 472. There shall be a district judge for each of the judicial district. The courts held by them shall be district courts of the Territory. The jurisdiction of these courts shall be of two kinds. First, Original. Second, Appellate.

SEC. 473. The district court shall have original jurisdiction in civil cases where the amount in dispute, or value of the property sued for, exceeds fifty dollars, and in all criminal cases not otherwise provided for. *Provided*, The district court may enter judgment for a less sum than fifty dollars upon the plaintiff paying costs, and may in like manner enter judgment for the recovery of personal property of less than fifty dollars value.

SEC. 474. The appellate jurisdiction of these courts shall extend to hearing upon appeal an order or judgment of a probate court or justice of the peace in the cases provided by law.

SEC. 475. The courts and judges thereof shall have power to issue all writs necessary and proper to the complete exercise of the power conferred on them by the constitution, organic act, and laws of this Territory.

SEC. 476. The terms shall be held at such times and places as provided by law. If a room for holding the court be not provided

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by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to provide such room, attendants, fuel, lights, and stationery, and the expense shall be a county charge.

SEC. 477. The district judges shall at all reasonable times, when not engaged in holding courts, transact such business at their chambers as may be done out of court. At chambers they may try and determine writs of *mandamus*, *certiorari*, and *quo warranto*, hear and dispose of all applications for orders and writs which are usually granted in the first instance upon an *ex parte* application, and may in their discretion also hear applications to discharge such orders and writs.

SEC. 478. When an action or proceeding is commenced in a district court in which a probate court has concurrent jurisdiction, the district court may, if the parties agree, by order transfer the same to the probate court of the same county. Upon such transferance the probate court shall have and exersise over such action or proceeding the same jurisdiction as if originally commenced therein.

Probate Court.

SEC. 479. There shall be in each county a probate court with the jurisdiction conferred by this chapter.

SEC. 480. The probate court shall have power to open and receive the proof of last wills and testaments and to admit them to probate, to grant letters testamentary of administration and of guardianship, and to revoke the same for cause shown according to law, to compel executors and administrators and guardians to render an account when required, or at the period by law to order the sale of property of estates or belonging to minors, to order the payment of debts due by estates, to order and regulate the partitions of property or estates of deceased persons, to compel the attendance of witnesses, to appoint appraisers or arbitrators, to compel the production of title deeds, papers, or other property of an estate or of a minor, and to make such other orders as may be necessary and proper in the exercise of the jurisdiction conferred on the probate court.

SEC. 481. The probate judge shall have power in vacation to appoint appraisers to receive inventories and accounts to be filed in

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his court, to suspend the powers of executors, administrators, or guardians in the cases allowed by law, to grant letters testamentary of administration or of guardianship, to approve claims and bonds, and to direct the issuance from his court of all writs and process necessary in the exercise of his powers as probate judge.

SEC. 482. The probate court shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy shall not exceed twenty-five hundred dollars.

SEC. 483. The probate court and the judge thereof shall have power at chambers to try and determine suits of *mandamus*, *certiorari*, and *quo warranto*, and to issue all writs necessary or proper to the complete exercise of the powers conferred upon it by this and other statutes, and in the absence of the district judge from the county to issue writs of *habeas corpus* and injunctions.

SEC 484. If a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to procure such room, attendants, fuel, lights, and stationery at the expense of the county.

SEC. 485. A regular term of the probate court shall be held at the county seat of each county on the first Monday in April, June August, October, December and February of each year, for the transaction of all business of which said court has jurisdiction. *Provided, however,* That if the district court of the district embracing any county be in session at such time, the probate court of the county in which said district court is held shall stand adjourned until the first Monday of the ensuing month.

SEC. 486. That if said court shall not be held on the first day of the term, such court shall stand adjourned from day to day until the evening of the third day; if at that time the judge shall not have appeared and opened court, the same shall stand adjourned until the next regular term. Special adjourned terms may be held in continuation of the regular term upon its being so ordered by the court in term time and entered by the clerk upon the record thereof.

SEC. 487. That if the judge be disqualified for any cause from sitting on the determination of any cause or proceeding pending before him, the cause shall be certified with the original papers to

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the district court of the district including the county, which shall proceed thereon to final judgment and determination.

SEC. 488. That each judge of the probate courts shall be a conservator of the peace throughout his county.

SEC. 489. In all civil cases within their jurisdiction the probate courts and the judges thereof shall have the same power to grant all orders and writs and process which the district courts or the judges thereof have power to grant within their jurisdiction, and to hear and determine all questions arising within their jurisdiction as fully and completely as the district courts or the judges thereof have power to do under the laws of this Territory.

SEC. 490. Juries in all civil actions in the probate court shall consist of not more than twelve nor less than six persons having the qualifications of electors, who shall not be summoned until the cause is at issue and set for trial and a demand is made by one or more of the parties, and their fees for one day paid into the hands of the clerk by the party making the demand.

SEC. 491. The clerk shall issue a *venire*, returnable on the day upon which the cause is set for trial, and if on the return day the panel be not full it may be filled by summoning others.

TITLE XIX.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

SEC. 492. When several persons hold and are in possession of real property as joint tenants or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof according to the respective rights of the persons interested therein, and for a sale of such property, or a part of it, if it appear that a partition cannot be made without prejudice to the owners.

SEC. 493. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specially and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon

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an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 494. No persons who have any claim or liens upon the property by mortgage, judgment, or otherwise, need be made parties to the action unless such liens be matters of record.

SEC. 495. Immediately after filing the complaint the plaintiff shall file with the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, so far as known, the object of the action and the description of the property affected thereby. From the time of filing it shall be deemed notice to all persons.

SEC. 496. The summons shall be directed to all the joint tenants and tenants in common, and all persons having any interest, or any liens of record, by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof, and generally to all persons unknown who have or claim any interest in the property.

SEC. 497. If a party having a share or interest is unknown, or any one of the unknown parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, publication may be made as in the other cases. The notice of publication shall contain a brief description of the property which is the subject of the action.

SEC. 498. The defendants who have been personally served with the summons shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property, and if such defendants claim a lien upon the property, by mortgage, judgment, or otherwise, they shall state the amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not, and if secured, the extent and nature of the security, or they shall be deemed to have waived their right to such lien.

SEC. 499. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action, and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment of sale shall be made, and when service by publication has been made, like proof shall be required of the right of the

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absent or unknown parties, before such judgment is rendered, except that when there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

SEC. 500. The plaintiff shall produce to the court, on the hearing of the case, the certificate of the recorder of the county where the property is situated, showing whether there were, or were not, any liens outstanding, of record, upon the property or any part thereof, at the time of the commencement of the action.

SEC. 501. If it appears, by the certificate of the recorder, that there were outstanding liens of record at the time of the commencement of the action, and the person holding or claiming such liens were not made parties to the action, the court shall either order such parties to be brought in by an amendment or supplemental complaint, or appoint a referee to ascertain whether their liens have been paid, or if not paid what amounts remain due, and their order among the liens, among the parties who have appeared and answered, and whether the amount remaining due thereon has been secured in any way, and if secured, the extent and nature of the security.

SEC. 502. The plaintiff shall cause a notice to be served, a reasonable time previous to the day for appearance before the referee, appointed as provided in the last section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof, by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely, thereon. In case such person be absent or his residence be unknown, service may be made by publication or notice to his agent, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require.

SEC. 503. If it be alleged in the complaint, and be established by evidence, or if it appear by evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, otherwise, upon the requisite proof being made, it shall order the

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partition, according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided, for the owners whose interests remain unknown or are not ascertained.

SEC. 504. In making partition, the referee shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them therein.

SEC. 505. The referees shall make a report of the proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

SEC. 506. The court may confirm or set aside the report, and if necessary, appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive on all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the termination of a particular estate therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have any interest in any undivided share thereof, as tenants for years, or for life, on all persons, who may be interested in the property, who are unknown, and notice shall have been given to them by publication, and all other persons claiming from such parties or persons, or either of them.

SEC. 507. But such judgment and partition shall not affect tenants for years, less than ten, to the whole of the property which is subject to partition.

SEC. 508. The expenses of the referees, including those of a surveyor and his assistants when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the different parties to the action.

SEC. 509. When a lien on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thence-

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forth be a charge only on the share assigned to such party, but such share shall first be charged with its just proportion of the costs of partition in preference to such lien.

SEC. 510. When a part of the property only is ordered to be sold, if there be an estate for life, or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

SEC. 511. The proceeds of the sale of the encumbered property shall be applied, under the direction of the court, as follows: First, To pay its proportion of the general costs of the action. Second, To pay the costs of the reference. Third, To satisfy and cancel of record the several liens in their order of priority, by payment of the sum due, and to become due, the amount to be verified by affidavit at the time of payment. Fourth, The residue among the owners of the property sold, according to their respective share therein.

SEC. 512. When any party to the action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before the distribution of the proceeds of sale, or may order a just deduction to be made, from the amount of the lien on the property, on account thereof.

SEC. 513. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs, but in case no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, or as directed by the court.

SEC. 514. When the proceeds of sales of any share or parcels belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court, or a referee, at the discretion of the court, and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original action.

SEC. 515. All sales of real property, made by referees under this chapter, shall be made by public auction, to the highest bidder, upon notice published in the same manner as required for the sale of real property on execution. The notice shall state the terms of

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sale, and if the property, or any part of it, is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

SEC. 516. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the Territory.

SEC. 517. The referees may take separate mortgages and other securities for the whole, or convenient portions, of the purchase money, of such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner, of full age, in the name of such owner, and for the shares of an infant, in the name of the guardian of such infant, and for other shares, in the name of the clerk of the county and his successors in office.

SEC. 518. The person entitled to a tenancy for life, or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

SEC. 519. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party, or deposited in court for him, as the case may require.

SEC. 520. If the person entitled to such estate for life, or years, be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known, and had appeared.

SEC. 521. In all cases of sale where it appears that any person has a vested or contingent interest, right, or estate, in the future, in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested interest, right, or estate, and shall direct such proportion of the proceeds of the sale

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to be invested, secured, or paid over, in such manner as to protect the rights and interests of parties.

SEC. 522. In all cases of sale of property, the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately.

SEC. 523. Neither of the referees, nor any person for the benefit of them, shall be interested in any purchase, nor shall a guardian of an infant party be interested in the purchase of any real property being the subject of the action, except for the benefit of the infant All sales contrary to the provisions of this section shall be void.

SEC. 524. After completing the sale of the property, or any part thereof ordered to be sold, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid as secured, the terms and conditions of the sale, and the securities (if any) taken. The report shall be filed in the office of the clerk of the court in the county where the property is situated.

SEC. 525. If the sale be confirmed by the court, an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

SEC. 526. When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

SEC. 527. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who have been named as parties to the action, and against all such parties and persons as were unknown, if the summons have been served by publication, and against all persons claiming from them, or either of them.

SEC. 528. When there are proceeds of sale belonging to an unknown owner, or to persons without the Territory, who have no legal representatives within it, the same shall be invested in securities on interest, for the benefit of the person entitled thereto.

SEC. 529. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be

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done (except as herein otherwise provided,) in the name of the clerk of the county in which the papers are filed, and his successor in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

SEC. 530. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the name of, and payable to, the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

SEC. 531. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken, and keep an account in a book provided for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

SEC. 532. When it appears that partition cannot be made equal between the parties according to their respective rights, and a partition be ordered by judgment, the court may adjudge compensation to be made by one party to another, on account of the inequality of partition, but such compensation shall not be required to be made by others, by owners unknown, nor by infants unless, in case of an infant, it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

SEC. 533. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale, to his general guardian, or the special guardian appointed by him in the action, upon giving the security required by law or directed by order of the court.

SEC. 534. The guardian who may be entitled to the custody and management of an estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person, his share of the proceeds of such real property, from the

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referees, on executing, with sufficient sureties, an undertaking approved by the judge of the court, or a probate judge, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled or his legal representative.

SEC. 535. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person incapable of conducting his own affairs, who is interested in real estate held in joint tenancy or in common, or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree to the share to be set off to such infant, or other person entitled, and may execute in his behalf a release to the owners of the shares of the party to which they may be respectively entitled, upon an order of the court, which partition shall be approved or disapproved by the court.

SEC. 536. The costs of the partition, including fees for referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced against such shares by execution, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto or any of them.

SEC. 537. The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this chapter, and the single referee, when thus appointed, shall have all the powers and perform all the duties required of three referees.

SEC. 538. When several persons hold and are in possession of mining claims as joint tenants or tenants in common, upon the petition of one or more of the joint tenants or tenants in common, the court having jurisdiction shall appoint a commissioner, who shall proceed to make partition of the property to be divided, and make a report to the court as provided in this act.

SEC. 539. In case of partition of a mining claim, any of the tenants in common or joint tenants interested therein may file an affidavit showing to the court that a sale for money would be inju-

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rious to him, her, or them; the court shall, upon such showing, appoint a commissioner, who shall decide such claim as hereinafter provided for.

SEC. 540. The commissioner provided for in the last section shall proceed to the place where such claim is located, and at such time as the court may direct, within not less than twenty nor more than forty days after such sale shall have been ordered by the court, shall sell such claim at auction to the highest bidder, in parts or parcels, to the joint tenant or tenants in common, and shall receive bids in shares or individual interests or parts of such claim to be divided.

SEC. 541. The party or parties seeking the partition of such mining claim shall be deemed the highest bidder within the meaning of the last preceding section who will take the least part or partition of such mining claim at a place upon such claim to be selected by him, her, or them in proportion to the whole share or shares or interest held by such party or parties, *provided*, that if the remainder of the joint tenants or tenants in common shall fail to make a higher bid in proportion to their joint shares or interests in such claim, then the bid of the party or parties seeking the partition shall be received and declared to be the highest bid, and the commissioner shall proceed to measure off such claim to the party or parties as hereinafter provided; and such claim or part of the claim so measured off by said commissioner to the highest bidder, shall be and is hereby considered as an entire surrender to the opposing party of the remainder of his or her shares or interest in such claim, thereby relinquishing the residue of the shares or interests held by the party to whom was awarded the highest bid (not included in the measurement of said commissioner) to the adverse party.

SEC. 542. Whenever any such bid as mentioned in the two next preceding sections shall have been received and declared, the commissioner shall go upon the claim and measure off to such bidder the amount of such claims so bid off, at such places the bidder shall have selected in his bid.

SEC. 543. After setting off such bids as provided in the last section, the commissioner shall again receive bids as hereinbefore provided, and shall thereafter measure off such bids as before stated, and shall continue in the same manner to receive bids and set apart

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the same from such claims until the parties who still hold an undivided portion of such claims shall be satisfied that such sale cease, and are content to hold the remaining portion of such claim as joint tenants or tenants in common as the case may be.

SEC. 544. The court may confirm or set aside the report, and if necessary appoint a new commissioner. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding upon all the parties to the action.

TITLE XX.

PROCEEDING IN JUSTICES' COURTS IN CIVIL CASES.

CHAPTER I.

SEC. 545. The courts held by justices of the peace in this Territory shall be denominated justices' courts, and shall have the jurisdiction conferred by this act; but nothing contained in this act shall affect their jurisdiction in actions or proceedings now pending therein, not shall it affect any judgment or order already made or proceedings already taken.

SEC. 546. Justices' courts shall have jurisdiction of the following cases: First, In all civil actions where the amount claimed does not exceed the sum of one hundred dollars. Second, Of actions to recover the possession of personal property when the value of such property does not exceed one hundred dollars. Third, Of an action for the foreclosure of any mortgage or lien on personal property, when the debt secured or amount claimed does not exceed one hundred dollars. Fourth, Of an action for a forcible or unlawful entry upon, or a forcible or unlawful detention of, lands, tenements, or other possessions. Fifth, Of an action to determine the right to a mining claim, and for damages for injury to the same, when the damages claimed do not exceed one hundred dollars. The jurisdiction conferred by this section shall not extend, however, to a civil action in which the title to real property shall come in question.

SEC. 547. These courts shall also have jurisdiction of all mis-

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demeanors committed within their jurisdiction punishable by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days or by both such fine and imprisonment.

SEC. 548. There shall be no terms in justices' courts. They shall be always open.

SEC. 549. Each justice before entering upon the discharge of his duties shall take the constitutional oath of office, and shall execute a bond to the Territory in the sum of two thousand dollars, conditioned for the faithful performance of his duties, and file the same with the county clerk, which bond shall be approved by such clerk.

SEC. 550. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater unless expressly provided by statute.

SEC. 551. Parties in justices' courts may prosecute or defend in person or by attorney; and any person on the request of a party may act as attorney, except that the constable by whom the summons or jury process was served shall not appear or act on the trial on behalf of either party.

SEC. 552. Judgment upon confession may be entered up in justices' court in this Territory specified in the confession.

SEC. 553. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to their residences or the place where the cause of action arose or the subject matter of the action may exist.

CHAPTER II.

SEC. 554. Actions in justices' courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, with a statement of the amount due therein, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleading of the parties without summons; in the latter case the action shall be deemed commenced at the time of appearance.

SEC. 555. When a guardian is necessary, he shall be appointed by the justice as follows: First, If the infant be plaintiff, the

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appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards, if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed and to be responsible for costs if he fail in the action, shall be first filed with the justice. Second, If the infant be defendant, the guardian shall be appointed at the time the summons is returned or before pleading. It shall be the right of the infant to nominate his own guardian if the infant be over fourteen years of age and the proposed guardian be present and consent in writing to be appointed, otherwise the justice may appoint any suitable person who gives such consent.

SEC. 556. The summons shall be addressed to the defendant by name, or if his name be unknown by a fictitious name, and shall summon him to appear before the justice at his office, naming its township or city, and at a time specified therein, to answer the complaint of the plaintiff for a cause of action therein described, in general terms sufficient to apprise the defendant of the nature of the claim against him, and in an action for money or damages shall state the amount the plaintiff will take judgment for if the defendant fail to answer, and shall be subscribed by the justice and dated on the day of its issue.

SEC. 557. The time mentioned in the summons for the appearance of the defendant, and the time of service, shall be as follows: First, When the summons is accompanied with an order for the arrest of the defendant it shall be returnable immediately. Second, In all other cases it shall be returnable in not less than four or more than ten days from its date, and shall be served at least four days before the time for appearance.

SEC. 558. The summons shall be served by the sheriff, or a constable of the county, or by some one specially appointed by the justice, as follows: First, If the action be against a corporation, by reading the same to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof, or when no such officer resides in the county, to a director resident therein, or by leaving a copy of the summons at the principal office or place of business of such corporation in the county. Second, If against a minor under the age of fourteen years, by reading the same to his father, mother, or guardian, or if there be none within the county,

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then to any person having the care or control of such minor, or with whom he resides, or in whose service he is, or by leaving a copy thereof at the dwelling house or place of abode of such person. Third, If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by reading the same to such guardian, or by leaving a copy thereof at his place of residence. Fourth, In all other cases, by reading the same to the defendant personally, or by leaving a copy at his place of residence.

SEC. 559. When the person on whom the service is to be made resides out of the Territory, or cannot, after due diligence, be found within the Territory, or conceals himself to avoid the service of summons, and the fact shall appear by affidavit to the satisfaction of the justice, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, the justice shall grant an order that service be made by publication of the summons. The order shall direct the publication to be made in a newspaper printed in the county in which the action is brought, if there is one, and, if not, in the newspaper printed nearest thereto, at least once a week: *Provided*, That a publication against a defendant residing out of the Territory, or absent therefrom, shall not be less than one month. The service of the summons shall be deemed complete at the expiration of the time prescribed by the order of publication.

SEC. 560. An order for the arrest of the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons and brought before the justice, and there detained until duly discharged, in the following cases: First, In an action for the recovery of money or damages, and a cause of action arising on contract, express or implied, where the defendant is about to depart from the Territory with the intent to defraud his creditors. Second, In an action for the embezzlement of property, or fraudulently misapplied, or converted to his own use, by an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity. Third, When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought. Fourth, When the defendant has removed, concealed or disposed of the property,

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or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action.

SEC. 561. Before any order for arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, or if the order of arrest be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

SEC. 562. The defendant, immediately on being arrested, shall be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of the defendant that he is a material witness for the defendant, the officer shall immediately take the defendant before the next nearest justice within the county, who shall take cognizance of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

SEC. 563. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney, or agent, and endorse on the summons and subscribe a certificate stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

SEC. 564. The officer making the arrest shall keep the defendant in custody until duly discharged by the order of the justice: *Provided*, That the officer shall not be bound to keep such person under arrest more than twenty-four hours, unless the plaintiff advance each day the expenses of keeping such person.

SEC. 565. The defendant under arrest, on his appearance with the officer, may demand a trial immediately, and upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the same time, or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff beyond three hours shall discharge the defendant from arrest, but the action may proceed as in other cases.

SEC. 566. If the defendant on his appearance demand an ad-

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journment, the same shall be granted on condition that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pending of the action, and such as may be issued to enforce the judgment therein, if it be found by the justice that the defendant was subject to arrest in such action, or that the sureties will pay to the plaintiff the amount of any judgment he may recover in the action. On filing such undertaking the defendant shall be discharged from custody.

SEC. 567. The defendant may file a plea under oath, putting in issue the facts stated in the affidavit for the order of arrest, and the plaintiff shall be held to establish such facts, and if he fail to do so, the order of arrest shall be dismissed, and the defendant may proceed upon the undertaking of the plaintiff for his damages occasioned by the arrest.

SEC. 568. A writ to attach the property of the defendant shall be issued by the justice, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts that are required to be shown by the affidavit in cases of attachment in the district court.

SEC. 569. Before issuing the writ, the justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages that he may sustain by reason of the attachment.

SEC. 570. The writ may be directed to the sheriff, or any constable of the county, and shall require him to attach and safely keep all the property of the defendant in the county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of the sufficient sureties, in an amount sufficient to satisfy such demand and costs, in which case, to take such undertaking.

SEC. 571. The provisions of this act, relating to attachments in the district courts, shall be applicable to justices, courts, the word constable being substituted for the word sheriff where the writ is directed to a constable, and the word justice being substituted for the words judge and clerk.

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SEC. 572. The plaintiff in an action to recover possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided herein.

SEC. 573. When a delivery is claimed, an affidavit shall be made by the plaintiff, or some one in his behalf, showing, First, That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second, That the property is wrongfully detained by the defendant. Third, The alleged cause of the detention thereof according to his best knowledge, information, and belief. Fourth, That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an attachment or execution against the property of the plaintiff, or if so seized that it is by statute exempt from such seizure, and, Fifth, The actual value of the property.

SEC. 574. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff or constable of the county to take the same from the defendant and deliver it to the plaintiff upon receiving the undertaking mentioned in the next section.

SEC. 575. Upon the receipt of the affidavit and order, with a written undertaking executed by two or more sufficient sureties, approved by the officer, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the officer shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody, and shall notify the defendant in writing if he can be found in the county, of the taking of such property, and by what authority.

SEC. 576. At any time within two days after the taking of such property by the officer, the defendant may require the return thereof, upon giving to the officer a written undertaking, with two or more sureties to be approved by the officer, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff for the delivery thereof to the plaintiff, if

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such delivery be adjudged, and for payment to him of such sum as may from any cause be recovered against the defendant. If a return of the property be not required, it shall be delivered to the plaintiff, except as provided in this act.

SEC. 577. If the property, or any part thereof, be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession.

SEC. 578. When the officer shall have taken the property, as provided in this act, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

SEC. 579. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff on demand of him or his agent, indemnifying the officer against such claim by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff over and above their debts and liabilities, exclusive of property exempt from execution, and are property holders of the county, and no claims to such property by any other person than the defendant or his agent shall be valid against the officer unless so made.

SEC. 580. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

SEC. 581. The qualification of sureties on the several undertakings required by this act shall be as follows: First, Each of them shall be a resident and property holder within the county. Second, Each shall be worth double the amount stated in the undertaking over and above all his debts and liabilities, exclusive of property exempt from execution, which facts shall appear by the affidavits of the sureties annexed to the undertaking or endorsed thereon.

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CHAPTER III.

PLEADINGS AND TRIAL.

SEC. 582. The pleadings in justices' courts shall be, First, The complaint by the plaintiff stating the cause of action. Second, The answer by the defendant stating the grounds of the defence.

SEC. 583. The pleadings shall be in writing and verified by the oath of the party his agent or attorney when the action is, First, For the foreclosure of any mortgage or the enforcement of any lien on personal property. Second, For a forcible or unlawful entry upon or forcible or unlawful detention of lands, tenements, or other possessions. Third, To recover possession of a mining claim. Fourth, When the defendant pleads matter in bar or abatement. In all other cases the pleadings may be oral or in writing.

SEC. 584. When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office and a reference to them made in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 585. The complaint shall state in a plain and direct manner the facts constituting the cause of the action.

SEC. 586. The answer may contain a denial of any of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement in a plain and direct manner of any other facts constituting a defence, counter claim, or set off, upon which an action might be brought by the defendant against the plaintiff in a justices' court.

SEC. 587. A statement in an answer that the defendant has not sufficient knowledge or information to form a belief in respect to a particular allegation in the previous pleadings of the adverse party shall be equivalent to a denial.

SEC. 588. When the cause of action or defences, or a set off to a set off arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereon from the adverse party a specified sum which

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he claims to recover or set off, the court may at the time of the pleading require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished; or if it be not so exhibited, and a copy furnished, may prohibit its being afterwards given in evidence, unless it appear that such instrument is not in the possession of the party pleading it, or under his control.

SEC. 589. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the maker, indorsers or assignors thereof unless he specifically deny the same in his answer under oath.

SEC. 590. Either party may object to the pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 591. A variance between the proof on the trial and the allegations in pleading shall be disregarded as immaterial unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 592. The pleadings may be amended at any time before trial to supply a deficiency or omission when by such amendments substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may also in its discretion require as a condition of an amendment the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars, but such payment shall not be required unless an adjournment is made necessary by the amendment; nor shall an amendment be allowed after a witness is sworn upon the trial when an adjournment thereby will be made necessary.

SEC. 593. The parties shall not be at liberty to give evidence

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by which the question of title to real property shall be raised in the trial before a justice; and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath or that of his agent or attorney, or if it appear at any time during the trial that the determination of the action will necessarily involve the decision of the question of title to real property, the justice shall suspend all further proceedings in the action and transmit the pleadings, and a certified transcript of his own proceedings in the action, to the clerk of the district court of his county, and from the time of filing such pleadings and transcript with the clerk of the district court shall have over the action the same jurisdiction as if it were originally commenced therein. *Provided*, That when the action is certified to the district court, upon the answer of the defendant, he shall file an undertaking, to be approved by the justice, to the effect that he will pay all costs that may be awarded against him on the trial in the district court.

SEC. 594. If at any time before the trial it appear to the satisfaction of the justice before whom the action is brought, by affidavit of either party, that such justice is a material witness for either party, or if either party made affidavit that he has reason to believe and does believe that he cannot have a fair and impartial trial before such justice, the action shall be be transferred to some other justice of the same county; and in case of a jury being demanded, and affidavit of either party is made that he cannot have a fair and impartial trial on account of the bias or prejudice of the citizens of the precinct or township against him, the action shall be transferred to some other justice of the peace in the county. The justice to whom the action may be transferred by the provisions of this section shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him The justice ordering the transfer of the action to another justice shall immediately transfer to the latter, on the payment of the costs due from the party procuring the transfer, all the papers in the action, together with a certified transcript of the proceedings that have been had in the action.

SEC. 595. Upon the return day of the summons, if a jury be demanded, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party as follows: First, When a party who is not a resident of

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the county is in attendance, the adjournment not to exceed twenty-four hours; when the defendant in attendance is under arrest, the adjournment not to exceed three hours. Second, In other cases not to exceed five days.

SEC 596. The trial may be adjourned by consent, or upon the application of either party without the consent of the other, for a period not exceeding ten days (except as provided in the next section) as follows: First, The party asking the adjournment shall, if required by his adversary, prove by his own oath or otherwise that he cannot, for want of material testimony which he expects to procure, safely proceed to trial, and shall show in what respects the testimony expected is material and the diligence he has used to procure it. Second, The party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of the adverse party who is in attendance be then taken by deposition before the justice, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect and subjections as if the witness were present; but such objections shall be made at the time of taking the deposition. Third, The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it is considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. It shall appear by the affidavit of the party or otherwise that due diligence has been used to obtain the evidence wanting before a postponement of the trial is made therefor.

SEC. 597. An adjournment may be had either at the time of joining issue or at any time subsequent, to which the case may stand adjourned on application of either party for a period longer than ten days, but not to exceed one month from the time of the return of the summons, upon proof by the oath of the party, or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced, that he has used due diligence (which shall be stated) to procure it, and has been unable to do so, and that he expects to procure the evidence at the

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time stated by him; *provided*, that if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered and overruled as improper, the adjournment shall not be had.

SEC. 598. No adjournment shall be granted for a period longer than ten days upon the application of either party, except on condition that such party file an undertaking, with sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment that may be recovered against the party applying.

SEC. 599. If the plaintiff fails to appear at the time set for trial, and the defendant appears and demands it, the action shall be dismissed.

SEC. 600. If either party fails to appear at the time set for trial, or fails to make the necessary pleading or proofs on his part, the case may nevertheless proceed at the request of the party present, and judgment shall be given in conformity with the pleadings and proofs.

SEC. 601. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it; when demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither desire an adjournment, the time and place shall be determined by the justice, and shall be within the next two days, or the same day. The jury shall be summoned, upon an order of the justice, from the citizens of the city or township, and not from the by-standers.

SEC. 602. At the time appointed for the trial, the justice shall proceed to call from the jurors summoned the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number not more than twelve nor less than six, and shall not be summoned until their legal fees for one day's service shall be paid into the hands of the justice by the party demanding the jury.

SEC. 603. Each juror shall be competent to serve as such in the district court. If a sufficient number of competent jurors do not attend, the justice shall direct others to be summoned from the vicinity, and not from the by-standers, sufficient to complete the jury.

SEC. 604. Either party may challenge peremptorily one-half

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of the jury. Challenge for cause may be made by either party for any cause that a challenge for cause can be made in the district court. Challenges for cause shall be tried by the justice.

CHAPTER IV.

JUDGMENT AND EXECUTION.

SEC. 605. Judgment that the action be dismissed without prejudice to a new action may be entered with costs in the following cases: First, When the plaintiff voluntarily dismisses the action before it is finally submitted. Second, When he fails to appear at the time set for trial, or within one hour thereafter, and the defendant appears and demands that the action be dismissed. Third, When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment. If not taken at the trial, it shall be deemed waived and shall not be cause of reversal.

SEC. 606. When the defendant fails to appear and answer, judgment shall be given for the plaintiff, as follows: When a copy of the account, note, bill, or other obligation upon which the action is brought, was filed with the justice at the time the summons was issued, judgment shall be given without further evidence for the sum specified in the summons.

SEC. 607. Upon issue joined, or when the defendant fails to appear, except cases mentioned in the last section, if a trial by jury be not demanded, the justice shall hear the evidence, and decide all questions of fact and of law, and render judgment accordingly.

SEC. 608. Upon a verdict by a jury, the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the trial, if the defendant has been arrested and is still in custody. In other cases, it shall be entered within four days after the close of the trial.

SEC. 609. If the action be on a contract against two or more defendants, and the summons be served on one or more but not on all, the judgment shall be entered up only against those who were

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served, if the contract be a several or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all and the separate property of the defendants served.

SEC. 610. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess and judgment may be rendered for the residue.

SEC. 611. If the defendant, at any time before trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs there accrued, but if he do not accept such offer before the trial, and fail to recover in the action a sum larger than the one mentioned in the offer, he shall not recover any costs accruing after the offer was made, but the offer and failure to accept shall not be given in evidence to affect the recovery otherwise than as to costs.

SEC. 612. When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment, and entered in the docket.

SEC. 613. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the verdict, or in case of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of the defendant for the amount of such costs.

SEC. 614. The justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the district clerk of the county where the judgment was rendered. The time of the receipt of the transcript by the district clerk shall be noted by him thereon and entered on the docket, and from that time executions may be issued by the district clerk on such judgment to the sheriff of any other county of the Territory, in the same manner as upon judgments rendered in the higher courts. All process and judgments recovered in justices' courts, to be executed within the same county, shall be issued by the justice or his successor in office. No judgment rendered by a justice of the peace shall create any lien on any lands of the defendant, unless a transcript of such judgment, certified by the justice, be filed and recorded in the office

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of the recorder. When such transcript is to be filed in any other county than the one in which the justice resides, such transcript shall be accompanied by the certificate of the county clerk as to the official character of the justice where so filed, and recorded in the office of the recorder of any county. Such judgment shall be a lien upon and bind the lands and tenements of the judgment debtor, situated in the county where the transcript may be filed and recorded, in favor of such judgment creditor, as if such judgment had been rendered in the district court of such county.

SEC. 615. Execution for the enforcement of judgment in a justices' court may be issued on the application of the party entitled thereto, at any time within five years from the entry of the judgment.

SEC. 616. The execution, when issued by a justice, shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice issuing the same, and shall bear date the day of its delivery to the officer to be executed; it shall intelligibly refer to the judgment, by stating the names of the parties and the name of the justice before whom, and of the county where, and the time when, it was rendered, the amount of the judgment, if it be for money, and if less than the whole is due, the amount due thereon; it shall contain, in like cases, similar directions to the sheriff or constable as are required in executions issued by the clerk of the district court.

SEC. 617. The sheriff or constable to whom the execution is delivered, shall proceed to execute the same in the same manner as the sheriff is required to execute executions issued by the clerk of the district court, and the constable when the execution is directed to him, shall be vested for that purpose with all the power of the sheriff, and after issuing an execution, and either before or after its return, (if the same be returned unsatisfied either in whole or in part), the judgment creditor shall be entitled to an order from the justice, requiring the judgment debtor to attend at a time to be designated in the order, and answer concerning his property before such justice, and the attendance of such may be enforced by the justice. On his attendance, such debtor may be examined on oath concerning his property, and any person alleged to have in his hands property, moneys, effects, or credits, of the judgment debtor, may also be required to attend and be examined, and the justice

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may order any property in the hands of the judgment debtor, or any other person, not exempt from execution, belonging to such debtor, to be applied toward the satisfaction of such judgment, and the justice may enforce such order by imprisonment until complied with, but no judgment debtor or other person shall be required to attend before any justice out of the county in which he resides.

CHAPTER V.

General Provisions.

Sec. 618. The provisions of this act, in relation to parties to actions in the district courts, and relative to practice, pleading, and trial, shall, so far as the same are applicable, and do not conflict with this title, be observed in justices' courts.

Sec. 619. Every justice shall keep a book denominated a docket, in which he shall enter, First, The title of every action or proceeding. Second, The object of the action or proceeding, and if a sum of money be claimed the amount of the demand. Third, The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts. Fourth, The time when the parties, or either of them, appear, or their non-appearance if default be made; a minute of the pleadings and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleadings, and of all motions made during the trial by either party, and his decisions thereon. Fifth, Every adjournment, stating on whose application, whether on oath, evidence or consent, and to what time. Sixth, The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial, and return of the jury. Seventh, The names of the jury who appear and are sworn, the names of all witnesses sworn, and at whose request. Eighth, The verdict of the jury, and when received, if the jury disagree and are discharged, the fact of such disagreement and discharge. Ninth, The judgment of the court, specifying the costs included, and the time when rendered. Tenth, The issuing of the execution, when issued, and to whom delivered, the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and

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when and by whom. Eleventh, The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed, with the amount thereof, and the names of the sureties. Twelfth, A note of any other proceedings taken in the action or proceeding.

SEC. 620. The several particulars of the last section specified shall be entered under the title to the action to which they relate, and at the time when they occur. Such entries in a justices' docket, or a transcript thereof certified to by the justice or his suc cessor in office, shall be primary evidence to prove the facts so stated therein.

SEC. 621. A justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index in the alphabetical order of the first letter of the family names.

SEC. 622. It shall be the duty of every justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors which may be in his custody, to be kept as public records. If the office of a justice become vacant by his death, removal from the township or city, or otherwise, before his successor is elected and qualified, the dockets in possession of such justice shall be deposited with the county clerk of the county, to be by him delivered to his successor in office of the justice.

SEC. 623. Any justice with whom a docket of his predecessor is deposited, may issue execution or other process upon a judgment there entered and unsatisfied, in the same manner and with the same effect as the justice with whom the judgment was entered might have done. In case of the creation of a new county, or the change of the boundaries between two counties, any justice in whose hands the docket of a justice formerly acting as such within the same territory may come shall for the purpose of this section be considered the successor of said former justice.

SEC. 624. The justice elected to fill a vacancy shall be deemed the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires the same or another person elected to take office in the same township or city from that time shall be deemed the successor.

SEC. 625. The summons, execution, and every other paper

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made or issued by a justice, except a subpœna, shall be filled up without a blank left to be filled by another, otherwise it shall be void.

SEC. 626. In case of sickness or other disability, or necessary absence of a justice, on a return of summons, or at a time appointed for a trial, another justice of the same county may at his request attend in his behalf, and shall thereupon become vested with the power for the time being of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the justice before whom the summons was returnable.

SEC. 627. A justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order, to arrest the defendant with or without a writ of attachment. Said justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing made on the process and a note thereof made in the justices' docket.

SEC. 628. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process, and shall be subject to the same obligations.

SEC. 629. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he were still in office, and his sureties shall be liable to the same extent.

SEC. 630. A justice may punish any person guilty of a contempt of his court, as defined by this act, by fine or imprisonment, or both, but such fine shall not exceed one hundred dollars, nor imprisonment shall not exceed one day.

SEC. 631. The acts for which the person is convicted shall be particularly specified in the justices' docket, and the judgment entered thereon.

SEC. 632. Justices of the peace may issue subpœnas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county.

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SEC. 633. Depositions may be taken in the same manner, to be used in justices' courts, as they are taken to be used in the district court.

SEC. 634. In actions respecting mining claims, proof shall be admitted of the customs, usages, and regulations, established and in force in the mining district embracing such claim, and such customs, usages, or regulations, when not in conflict with the laws of this Territory, shall govern the decision of the action.

SEC. 635. A new trial may be granted by the justice, on motion, within ten days after the entry of judgment, for any of the following causes: First, Accident or surprise, which ordinary prudence could not have guarded against. Second, Excessive damages, appearing to have been given under the influence of passion. Third, Insufficiency of the evidence to justify the verdict, or other decision. Fourth, Newly-discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

SEC. 636. The application shall be made upon affidavit and notice; the affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

SEC. 637. Any party dissatisfied with a judgment rendered in a justices' court, may appeal therefrom to the district court of the county, at any time within thirty days after the rendition of the judgment. The appeal shall be taken by filing a notice of appeal with the justice, and serving a copy of the same upon the adverse party.

SEC. 638. The party appealing shall file with the justice, within the time allowed for taking an appeal, an undertaking in double the amount of the judgment appealed from, or if the judgment be for the recovery of specific personal property, in double the value of such property, with sufficient sureties, and conditioned that the party appealing will pay any judgment that may be rendered against him in the district court, as well as all costs that may be awarded against him, and for the prosecution of such appeal to effect, or if the party in whose favor judgment is rendered appeals, the bond shall be continued for the prosecution of the appeal to effect, and for the payment of all costs that may be adjudged against the

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appealing party. The undertaking shall be accompanied by the affidavit of the sureties that they are residents of the county, and are each worth, over and above their debts, liabilities, and property by law exempt from execution, the amount specified in the undertaking, but several sureties may state that they are worth sums less than the amount stated in the undertaking besides such exemptions, if the whole amount equals the amount of two sufficient sureties.

SEC. 639. Upon receiving the notice of appeal, and the undertaking, as provided in the last section, and payment of fees therefor, the justice shall make out a full and complete transcript from his docket of all the proceedings in the action before him, and transmit it, together with all the motions, pleadings, and all other papers belonging to the said cause, to the clerk of the district court of the county, which transcript shall be certified by such justice, within ten days after the filing of the appeal, bond, and notice of appeal, the justice may be compelled by an order of the district court entered on motion, to transmit any or all of such papers, and may be fined for neglect or refusal to transmit the same.

SEC. 640. If the party appealing fail to reduce or enlarge the judgment appealed from, ten dollars or more, or reverse the same in the district court, he shall not recover any of the costs of the appeal.

SEC. 641. All appeals from justices' courts shall be tried anew, in the district court, on the papers filed in the justices' court, unless the court, for good cause shown, and on such terms as may be just, allow other papers to be filed in such action. Either party may demand a trial by jury in the district court. Each party shall have the benefit of all legal objections made in the justices' court.

SEC. 642. If an execution shall have been issued on a judgment appealed from, on the filing of the appeal bond, the justice shall by order direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

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SEC. 643. Costs shall be allowed the prevailing party in justices' courts.

SEC. 644. Justices of the peace shall receive from the sheriff or constable of their county, all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in their official capacity, and shall pay the same over to the parties entitled or authorized to receive them, without delay. For a violation of this section, they may be removed from their office, and shall be deemed guilty of a misdemeanor.

SEC. 645. Justices of the peace may in all cases require a deposit of money, or an undertaking, as surety for costs of court, before issuing a summons.

SEC. 646. In actions respecting mining claims, the justice shall have power, upon application of the party out of possession of the claim or claims, after notice of one day to the adverse party, to appoint a receiver of the proceeds of the claim pending the action. If the parties agree upon a person, he shall be appointed such receiver. If the parties do not agree, the justice shall appoint a receiver, who shall take an oath, which shall be filed with the justice, that he is not interested in the action between the parties, and that he will honestly keep an account of all gold or metals of any kind the proceeds of the claim in dispute. After the appointment of such receiver, the justice shall have power to issue an order to any sheriff or constable to put such receiver into possession of such claim, and such receiver shall continue in possession thereof until the action is determined.

TITLE XXI.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

SEC. 647. No person or persons shall hereinafter make any entry into the lands, tenements, or other possessions, or by entering upon any gulch mining claim, or quartz lode mining claim, or other mining claim, in the temporary absence of the party or parties in possession, or by entering peaceably, and the turning out by force, or frightening by threats, or other circumstances of terror, the party or parties, out of possession, and detain and hold the same. In every such case, the person so offending shall be deemed guilty of a

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forcible entry and detainer within the meaning of this act; but not in cases where entry is given by law, and in such cases not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

SEC. 648. Any justice of the peace shall have authority to inquire as hereinafter directed, as well as against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same as against those who, having lawful and peaceable entry into lands, tenements, or other possessions, unlawfully detain the same, and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, or that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

SEC. 649. When any complaint shall be made in writing to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before said justice on a day named in the summons, which shall not be more than ten days from the issuing of such summons, and at the place therein mentioned.

SEC. 650. Such summons shall be served upon the person or persons against whom the same is issued, as other summons are served issued by a justice, at least four days before the return day thereof, and the officer serving the same shall make return of the time and manner of such service.

SEC. 651. After the return of the summons served as hereinbefore provided, and at the time and place appointed in said summons, the justice shall proceed to hear and determine said complaint, unless either party demand a jury, in which case a jury shall be summoned in the same manner and on the same terms, and the trial shall be had as in other cases of trial by jury before a justice.

SEC. 652. If at the time set for trial the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for want of some material witness, naming him, that he has made due exertion to obtain such witness or his testimony, and believes if

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an adjournment be allowed he will be able to procure the testimony of such witness, in which case, if such person or persons will give bond, with sufficient surety, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding one month.

SEC. 653. The testimony of any witness which may be considered necessary by either party, may be taken in the same manner and with like effect as is provided for the taking of testimony in other cases in justices' courts.

SEC. 654. On the trial the complainant shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of the forcible entry, or was entitled to the possession of the premises at the time of the unlawful holding over. The defendant may show in his defence that he or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inquisition, and that his interest therein is not yet ended or determined; and such showing shall be a bar to the prosecution; and in no case where the title to land is involved shall a justice of the peace have cognizance.

SEC. 655. If upon the trial, upon any complaint under this act, the justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations of the complaint, said justice shall enter judgment for the complainant to have restoration of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution therefor; and the said justice shall award and issue a writ of restitution. But if the said justice or jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant and issue execution therefor.

SEC. 656. If the jury empanelled cannot agree upon a verdict, the justice may, with the consent of the parties, discharge them, and issue a *venire*, returnable forthwith, or at some other time agreed upon by the parties.

SEC. 657. In all cases of a verdict by the justice or jury for

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the complainant, the damages shall be assessed as well for the waste and injury committed upon the premises as for the rents and profits during such detainer; and the verdict shall also find the monthly rents and profits of the said premises, and the complainant shall be entitled to recover treble damages against the persons against whom the judgment has been rendered, which damages shall be assessed by the justice or jury, and when so assessed shall be trebled by said justice and entered as a judgment in the cause upon which execution may issue.

SEC. 658. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to them, or to the person under whom they hold possession, or contrary to the covenants or conditions of the lease or agreement under which they hold, or after any rent shall become due according to the terms of the lease or agreement, and shall remain unpaid for the space of three days, in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent or attorney, shall make demand in writing of such tenant that they shall deliver possession of the premises held as aforesaid, and if such tenant shall refuse or neglect for the space of three days after such demand to quit the possession of such lands or tenements. or to pay the rent thereof due and unpaid, as aforesaid, upon complaint thereof to any justice of the peace of the proper county, the justice shall proceed to hear, try and determine the same in the same manner as in other cases hereinbefore provided for, but shall impose no fine in any such case mentioned in this section.

SEC. 659. The preceding section shall not extend to any person who has or shall have continued in possession one year after the termination of the time for which the premises were demised or leased or let to them or those under whom they hold possession, or to any person who continues in possession three years quietly and peaceably.

SEC. 660. Every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or who appearing shall refuse to serve or give evidence in any prosecution instituted under this act, shall forfeit and pay for every such default or refusal to the use of the county, unless some reasonable cause be assigned, such fine,

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not exceeding twenty dollars, as the said justice shall think proper to impose, and execution may be issued therefor.

SEC. 661. Appeals may be taken from all judgments rendered under this act to the district court, under the same rules and restrictions as to notice, appeal bond, and other matters, as are required on appeals from justices' courts in other cases; but in case such appeal be taken by the defendant, the undertaking shall contain an additional condition, to the effect that he will pay to the plaintiff all rents, profits and other damages that may accrue during the pendency of the appeal. If the appeal should be decided against him upon the filing of the appeal bond, all proceedings shall be stayed.

SEC 662. Such appeals shall be tried in the district court as other appeals from justices' courts are tried.

SEC. 663. Amendments to the complaint, answer, or other proceedings in matters of form only, may be allowed by the justice, or the district court, on appeal, at any time before judgment, upon such terms as may be just, and all matters of excuse, justification, or evidences of allegations in the complaint, may be given in evidence under the answer.

SEC. 664. All rules and regulations relating to trial before justices of the peace in other cases, and not inconsistent with the provisions of this title, shall be applicable, and be observed in trials arising under this title.

SEC. 665. An act entitled an act to regulate the proceedings in civil cases in the courts of justice of the Territory of Idaho, approved February 1st, 1864, and an act entitled an act supplementary to an act entitled an act to regulate proceedings in civil cases in courts of justice in the Territory of Idado, approved February 4th, 1864, passed by the legislature of Idaho at its first session, begun and held at Lewiston on the 7th day of December, 1863, and all other laws, or parts of laws, that are inconsistent with this act, be and the same are hereby repealed.

SEC. 666. This act shall take effect and be in force from and after its approval by the governor.

[Approved.]

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CRIMINAL PRACTICE ACTS.

AN ACT concerning Crimes and Punishments.

CHAPTER I.

PERSONS CAPABLE OF COMMITTING CRIMES.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. In every crime or public offence, there must be union or joint operation of act or intention, or criminal negligence.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offence and the sound mind and discretion of the person accused.

SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age if such person know the distinction between good and evil.

SEC. 4. An infant under the age of fourteen years shall be deemed incapable of knowing the distinction between good and evil unless the contrary be clearly shown.

SEC. 5. Any person counselling, advising, or encouraging an infant under the age of ten years, a lunatic, or idiot, to commit any offence, shall be prosecuted for such offence, where committed as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such persons counselling, advising, or encouraging, as aforesaid, had he, she or they committed the offence directly, without the intervention of such idiot, lunatic, or infant.

SEC. 6. A married woman, acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime not punishable with death. *Provided*, It appear from all the facts

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and circumstances of the case, that violent threats, commands, or coercion were used, and in such case the husband shall be prosecuted as principal, and receive the same punishment as would otherwise have been inflicted upon the wife if she had been found guilty.

SEC. 7. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance, or force of some other person or persons, for the purpose of causing the perpetration of an offence; in which case the person or persons so causing said drunkenness for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence if he, she, or they had been possessed of sound reason and discretion.

SEC. 8. All acts committed by misfortune or accident shall not be deemed criminal where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

SEC. 9. A person committing a crime not punishable with death, under threats or menaces, which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life was in danger, shall not be found guilty; and such threats or menaces being proved and established, the person or persons compelling, by such threats or menaces, the commission of the offence, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offence.

CHAPTER II.

ACCESSORY.

SEC. 10. An accessory is he or she who stands by and aids, abets or assists, or who not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets, or assists, advises or encourages, shall be deemed and considered as principals, and punished accordingly.

SEC. 11. An accessory after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with, or

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found guilty of the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in any sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime.

CHAPTER III.

WITNESSES.

SEC. 12. The party or parties injured shall in all cases be competent witnesses; the credibility of all such witnesses shall be left to the jury, as in other cases. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness against another in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against himself in any criminal prosecution; and any person may be compelled to testify as provided in this section.

SEC. 13. No black or mulatto person, or Indian or Chinese, shall be permitted to give evidence in favor of or against any white person. Every person who shall have one-eighth part or more of negro blood shall be deemed a mulatto; and every person who shall have one-half of Indian blood shall be deemed an Indian.

SEC. 14. The solemn affirmation of witnesses shall be deemed sufficient. A false or corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit wilful and corrupt perjury.

CHAPTER IV.

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

SEC. 15. Murder is the unlawful killing of a human being, with malice aforethought, either expressed or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

SEC. 16. Express malice is that deliberate intention unlawfully

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to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

SEC. 17. Malice shall be implied when no considerable provocation appears, or when all circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree; but if such person be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Every person convicted of murder of the first degree shall suffer death; and every person convicted of murder in the second degree shall suffer imprisonment in the Territorial prison for a term not less than ten years and which may be extended to life.

SEC. 18. Manslaughter is the unlawful killing of a human being without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible; or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

SEC. 19. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed, to commit a serious personal injury on the person killing.

SEC. 20. The killing must be the result of that sudden violent impulse of passion supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given, and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder.

SEC. 21. Involuntary manslaughter shall consist in the killing

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of a human being without any intent to do so, in the commission of any unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner: *Provided*, That when such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged murder.

SEC. 22. Every person convicted of the crime of manslaughter, shall be punished by imprisonment in the Territorial prison, for a term not exceeding ten years.

SEC. 23. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke was received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first.

SEC. 24. If the injury be inflicted in one county and the party die in another county, or without the Territory, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

SEC. 25. Justifiable homicide is the killing of a human being in necessary self-defence, or in defence of habitation, property or person against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons, who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

SEC. 26. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of such fears, and not in a spirit of revenge.

SEC. 27. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing that in order to save his own life or to prevent his receiving great bodily harm the kill-

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ing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had, really and in good faith, endeavored to decline any further struggle before the fatal blow was given.

SEC. 28. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, by reason of such resistance he or she be killed, the officer or private person so killing shall be justified: *Provided*, That such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success; and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

SEC. 29. Justifiable homicide may also consist in unavoidable necessity without any will or desire, and without any inadvertency, or negligence in the party killing. An officer who in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

SEC. 30. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an axe, and the head flies off and kills a by-stander, or where a parent is moderately correcting a child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correcting was lawful; but if a parent or master exceeds the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter, or murder, according to the circumstances of the case.

SEC. 31. All other instances which stand upon the same footing of reason and justice as those enumerated shall be considered justifiable or excusable homicide.

SEC. 32. The homicide appearing to be justifiable or excusable,

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the person indicted shall, upon his trial, be fully acquitted and discharged.

SEC. 33. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, — unless the proof on the part of the prosecution sufficiently manifest that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

SEC. 34. If any woman shall endeavor privately, either by herself or the procurement of others, to conceal the death of any issue of her body male or female, which, if born alive would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the Territorial prison for a term not exceeding one year: *Provided, however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 35. If any person shall, by previous appointment, or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small-sword, back-sword, or other dangerous weapon; and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall be punished accordingly.

SEC. 36. If any person shall hereafter challenge another to fight a duel with deadly weapons, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon an action thereof, be rendered incapable of holding any office of trust or profit, either civil or military, under the government of the Territory, and fined in any sum not exceeding five hundred dollars.

SEC. 37. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, surgeon, or spectator, or who shall advise or give assistance to such duel, shall be a competent witness against any person offending against any of the provisions of this act, and may be compelled to appear and give evidence before any justice of the peace, grand jury, or court, in the same manner as other witnesses, but the testi-

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mony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.

SEC. 38. If any person, with or without deadly weapons, upon previous agreement, fight one with another, and should death ensue to any person in such fight, or should any person die from an injury received in such fight, within one year and a day, the person or persons causing such death shall be deemed guilty of murder in the first degree, and shall be punished accordingly.

SEC. 39. That any person in this Territory having, carrying, or procuring from another person, any dirk, dirk-knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall, in the presence of two or more persons, draw or exhibit any of said deadly weapons, in a rude, angry, and threatening manner, not in necessary self-defence, or who shall in any manner unlawfully use the same in any fight or quarrel, the person or persons so offending, upon conviction thereof in any criminal court, in any county in this Territory, shall be fined in any sum not less than one hundred nor more than one thousand dollars, or imprisoned in the Territorial prison not less than one nor more than twelve months, at the discretion of the court, or both such fine and imprisonment, together with the costs of prosecution, which said costs shall in all cases be computed and collected in the same manner as costs in civil cases. All fines and forfeitures arising under the provisions of this act shall be paid in to the county treasury of the county wherein such offence was committed, for county purposes. *Provided, nevertheless*, That no sheriff, deputy sheriff, constable, marshal, or other peace officer, shall be held to answer, under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned, while in the lawful discharge of his or their duties. It shall be the duty of all military, civil, and peace officers in this Territory to be vigilant in carrying the provisions of this act into full force and effect, as well, also, as all grand juries, or grand jurors, to inquire into and make presentment of each and every offence, under this act, which shall come under or within their knowledge. It shall be and is hereby made the duty of all judges in this Territory to give this act in charge to the grand juries at each term of their respective courts; and also to all trial juries empanelled for the trial of any of the offences hereinbefore mentioned in this act.

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SEC. 40. If any person shall assault and beat another with a cowhide, stick or whip, having at the time in his possession a pistol, or other deadly weapon, with an intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the Territorial prison not less than one nor more than ten years.

SEC. 41. Every person who shall wilfully and maliciously administer, or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life. And every person who shall administer, or cause to be administered, or taken, any medicinal substance, or shall use, or cause to be used, any instruments whatever, with the intention to produce the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years. *Provided*, That no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life.

SEC. 42. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily, or on purpose, put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the Territorial prison for a term not exceeding fourteen years.

SEC. 43. Rape is the carnal knowledge of a female, forcibly, and against her will, and a person duly convicted thereof, shall be punished by imprisonment in the Territorial prison for a term not less than five years, and which may be extended to life. And any person who shall have carnal knowledge of any female child under the age of ten years shall be adjudged guilty of the crime of rape, and upon conviction thereof shall be imprisoned for life. And every person of the age of sixteen years or over, who shall have carnal knowledge of any woman above the age of ten years, with-

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out her consent, by administering to her any substance or liquid, which shall produce such stupor or imbecility of mind, or weakness of body, as to prevent effectual resistance, shall upon conviction be adjudged guilty of rape, and be punished by imprisonment in the Territorial prison for a term not less than ten years.

SEC. 44. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the Territorial prison for a term not less than five years, and which may extend to life.

SEC. 45. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another, and every person convicted thereof shall be fined in a sum not less than fifty nor more than five hundred dollars, or imprisoned in the county jail not exceeding six months.

SEC. 46. An assault with an intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the Territorial prison not less than one year nor more than two years, or to a fine not less than one thousand nor more than five thousand dollars, or to both such fine and imprisonment.

SEC. 47. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year.

SEC. 48. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the Territorial prison for a term not exceeding one year.

SEC. 49. Kidnapping is the forcible abduction or stealing away

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of a man, woman, or child from his or her own home, and sending or taking him or her into another county.

SEC. 50. Every person who shall forcibly steal, take, or arrest any man, woman, or child, either white or colored, or any Indian, in this Territory, and carry him or her into another county, state, or territory, or who shall forcibly take or arrest any person or persons whomsoever, with a design to take him or her out of this Territory, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping, and be punished by imprisonment in the Territorial prison for any term not less than one nor more than ten years for each person kidnapped or attemped to be kidnapped.

SEC 51. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, or Indian, to go out of this Territory, or to be taken or removed therefrom for the purpose and with the intent to sell such negro, mulatto, colored person, or Indian into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, or colored person, or Indian, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof shall be punished as in the next preceding section specified.

SEC. 52. Every person who shall take any woman unlawfully against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, and shall be thereof convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two nor more than fourteen years, and the record of such conviction shall operate as a divorce to the party so married.

SEC. 53. Every person who shall maliciously, forcibly, or fraudulently, lead, take, or carry away, or decoy or entice away any child under the age of ten years, with intent to detain and conceal such child from the parent, guardian, or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment. If any father or mother of any child under the age of six years, or any other person to whom

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such child shall have been confided, shall expose such child in a street, field, or other place, with intent wholly to abandon it, he or she shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not less than six months. Every person who shall wilfully poison any spring, well, or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison for a term not less than one nor more than ten years.

SEC. 54. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his or her will, he shall be punished, upon conviction thereof, by imprisonment not more than one year nor less than six months, or by fine not exceeding five hundred dollars nor less than one hundred dollars, or by both such fine and imprisonment.

CHAPTER V.

OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

SEC. 55. Every person who shall wilfully and maliciously burn, or caused to be burned, in the night time, any dwelling-house in which at the time there is some human being, of which he shall have knowledge, shall be deemed guilty of arson in the first degree, and upon conviction thereof shall be punished with death.

SEC. 56. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling or building owned by himself, or the property of another, in the night or day time, wilfully burn, or cause to be burned, any kitchen, office, shop, barn, stable, storehouse, warehouse, or other building, or stack or stacks of grain, or standing crops, the property of another person, or corporation, or any church, meeting-house, school-house, state-house, court-house, or other public building, or any ship, vessel, boat, or other water craft, or any bridge of the value of fifty dollars or more, erected across any of the waters of this Territory, such person so offending shall be deemed guilty of arson in the second degree, and upon conviction thereof shall be punished by imprison-

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ment in the Territorial prison for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of such burning, as mentioned in this and the preceding section, such offender shall be deemed guilty of murder in the first degree, and shall be indicted and punished accordingly.

SEC. 57. Every person who shall wilfully burn, or cause to be burned, any building, or any goods, wares, merchandise, or other chattels, which shall be at the time insured against loss or damage by fire, with intent to injure or defraud such insurer, whether the same be the property of such person or of any other, shall, upon conviction, be adjudged guilty of arson in the second degree, and punished accordingly.

SEC. 58. Every person who shall, in the night time, forcibly break and enter, or without force (the doors and windows being open), enter into any dwelling-house, or any other house whatever, or tent, with intent to commit murder, rape, robbery, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and upon conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less that five nor more than twenty years.

CHAPTER VI.

OFFENCES AGAINST PROPERTY.

SEC. 59. Robbery is the felonious and violent taking of money, goods, or other valuable things, from the person of another by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the Territorial prison for a term not less than five years, and which may be extended to life.

SEC. 60. Every person who shall feloniously steal, take, and carry away, lead or drive away, the personal goods or property of another, of the value of fifteen dollars or more, shall be deemed guilty of grand larceny; and upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 61. Every person who shall feloniously steal, take and carry, lead or drive away, the personal goods or property of another,

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under the value of fifteen dollars, shall be deemed guilty of *petit* larceny; and upon conviction thereof, shall be punished by imprisonment in the county jail not more than twelve months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC 62. That every person who shall feloniously steal, take and carry, lead or drive away, any dog, either of the male or female kind, belonging to another, shall be deemed guilty of petit larceny; and upon conviction thereof, shall be punished by imprisonment in the county jail, not more than six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. In any judgment rendered for a fine only, the judgment shall provide that unless the same be paid the defendant shall be imprisoned in the county jail at the rate of one day for every two dollars of the fine.

SEC. 63. Bonds, promissory notes, bank notes, bills, of exchange or other bills, orders, drafts, checks, receipts, or certificates, or warrants for or concerning money, goods, or property, due, or to become due, or to be delivered, or any public security issued by the United States, or by this Territory, and any deed or writing containing a conveyance of land, or valuable contract in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods of which larceny may be committed, and the money due thereon, or secured thereby, and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or effected thereby, as the case may be, shall be deemed the value of the article stolen.

SEC 64. Every person, who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery, burglary, or embezzlement, knowing the same so to have been obtained, shall, upon conviction, be imprisoned in the Territorial prison for a term not exceeding five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, and every such person may be tried, convicted and punished as well before as after the trial of the principal. No person convicted of the offences specified in this section, shall be condemned to imprisonment, in the Territorial prison, unless the value of the thing bought or received shall

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amount to fifteen dollars, but the same shall be punished as provided in cases of petit larceny.

SEC. 65. All property obtained by larceny, robbery, burglary, or embezzlement, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser, or not, shall divest the owner of his right to such property. Such owner may maintain his action not only against the felon, but against any person in whose possession he may find the property.

SEC. 66. Every person bringing any goods or property into this Territory, taken by himself, or which he knew was taken by another, in another Territory or State, by robbery, burglary, embezzlement, or larceny, shall, upon reasonable cause being shown to a magistrate to induce him to believe that the accused has brought such goods or property into this Territory, taken in either of the ways aforesaid in another Territory or State, be committed to the county jail, to await a requisition from the governor of the Territory or State, whence such goods or property were brought as aforesaid into this Territory: *Provided*, That such person shall not be detained in such custody longer than a period of eight weeks.

SEC. 67. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goats, hogs, shoats, or pigs, not his or her own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the Territorial prison, for a term not less than six months nor more than five years.

SEC. 68. Every servant, officer, or person, employed in any public department, station, or office, of the government of this Territory, or any county of this Territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take, or carry away, any money, goods, chattels effects, books, or book of record or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money, or property, of whatever description it may be, being the property of said Territory, county, or corporate body, shall, on conviction thereof, be punished by imprisonment in the Territorial

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prison, for a period of time not less than one year, nor more than ten years.

SEC. 69. If any officer who now is or hereafter may be intrusted by law to collect, disburse, or receive, or safely keep, any money or moneys, revenue or revenues, belonging to this Territory, to the school fund of this Territory, to the school fund of any county or township of any county in this Territory, to any canal, turnpike or railroad fund of this Territory, or any county thereof, or to any fund for the improvement of any public road or roads, river, creek, or other water course, bordering on or within this Territory, or to any other fund now being or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes and orders, which any such officers or persons shall receive for disbursement, and has not disbursed, or shall collect, or shall receive for safe keeping, belonging to this Territory, to any county of this Territory, or to any such fund as aforesaid, when such officer or person shall thereto be required by law, and demand duly made by the successor or successors, of such officer, or person in office, or by the officer or person to whom such money, warrants, bills, notes, or orders, ought by law to be paid over, or his or their attorney or agent duly authorized in writing, signed and acknowledged. If such demand be practicable, every such officer or person shall, on conviction, therefor be punished by imprisonment in the Territorial prison for a term not less than two years, nor more than five years: *Provided*, That no person shall be imprisoned in the Territorial prison under this section, unless the money not paid over shall amount to more than one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall forever thereafter be disqualified from holding any office of honor, trust, or profit, in this Territory.

SEC. 70. That if any officer of the Territory, or of any county, city or town, in this Territory, charged with the safe keeping, transfer, or disbursement of public moneys, shall convert to his own use, in any way whatever, or shall use by way of investment in any kind of property or merchandise, or shall loan, with or without interest, any portion of the public moneys, bonds, or other evidences of indebtedness of the Territory, intrusted to him for safe keeping, transfer, or disbursement, or any other purpose, every such act

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shall be deemed and adjudged to be an embezzlement of so much of such moneys as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be felony; and the neglect or refusal to pay over on demand any public moneys in his hands upon the presentation of a draft, or order or warrant, drawn upon him by the proper officer, or any officer authorized by law, and signed by such officer, or to transfer, or disburse, any such moneys, promptly according to law, on the legal requirement of any officer authorized to make such requirement, shall be prima facie evidence of such conversion to his own use of the public moneys as may be in his hands. All persons advising, or knowingly or wilfully participating, in such embezzlement, upon being convicted thereof, before any court of this Territory, of competent jurisdiction, shall, for every such offence, forfeit and pay to the Territory, a fine equal to the amount embezzled, and shall suffer imprisonment in the Territorial prison for a term not less than two years, nor more than ten years.

SEC. 71. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any way destroy any debt, lease, bond, will or any other writing sealed, or any bank bill, or note, check, warrant or certificate, for the payment of money, or other thing, or the delivery of goods, or any certificate, or other public security of this Territory, or of the United States, or any State or Territory, for the payment of money, or any receipt, acquittance, release or defeasance, discharge of any debt, suit or other demand, or any transfer, or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day-book, or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person, or body corporate, shall, upon conviction thereof, be punished by imprisonment in the Territorial prison, for a term not less than one year, nor more than five years.

SEC. 72. Every person who shall wilfully or maliciously remove any monument of stone, wood, or other durable material, erected for designating the corner, or other point, or any post or stake fixed or driven into the ground for the purpose of designating a point in a boundary of any lot or tract of land, or alter the marks on any tree, post, or other monument, made for the purpose of designating any point, course, or line, in the boundary of any lot

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or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by a fine not less than one hundred, nor more than two thousand dollars, or by imprisonment in the county jail, for a term not less than one month, nor more than one year.

SEC. 73. If any clerk, apprentice or servant, or any other person, whether bound or hired, to whom any money, or goods or chattels, or other property, shall be entrusted by his master or employer, shall withdraw himself from his master or employer, and go away with the money, goods, chattels, or other property, or any part thereof, with intent to steal the same and defraud his master or employer thereof, contrary to the trust and confidence in him reposed by his said master or employer, or being in the service of his said master or employer, shall embezzle the said money, goods or chattels, or property, or any part thereof, or otherwise shall convert the same to his own use, with like purpose to steal the same, every person so offending shall be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so taken, embezzled or converted.

SEC. 74. If any bailee of any money, goods, or property, shall convert the same to his own use, with intent to steal the same, he shall be guilty of grand or petit larceny, according to the amount of the money, or value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

SEC. 75. If any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and on conviction, shall be punished accordingly.

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CHAPTER VII.

FORGERY AND COUNTERFEITING.

SEC. 76. Every person who shall falsely make, alter, forge, or counterfeit, any record or other authentic matter of a public nature or character, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or receipt for money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer of assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or shall counterfeit or forge the seal or handwriting of another, with an intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this Territory or not, or shall utter, publish, pass, or attempt to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this Territory or not, every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than fourteen years.

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SEC. 77. Every person who shall counterfeit any of the species of gold or silver coin now current or that shall hereafter be current in this Territory, or shall pass or give in payment such counterfeit coin, or permit, cause or procure the same to be uttered, or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the Territorial prison, for a term not less than one year, nor more than fourteen years.

SEC. 78. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current or hereafter to be current in this Territory, with intention to utter or pass the same, or permit, cause or procure the same to be uttered, or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison, for a term not less than one year, nor more than fourteen years.

SEC. 79. That every person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred nor more than six hundred dollars.

SEC. 80. That any person who shall sell any goods, wares or merchandise, having thereon any forged or counterfeited stamps or labels, purporting to be stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail, for a term not exceeding six months, or by a fine not less than three hundred dollars, nor more than six hundred dollars.

SEC. 81. Every person who shall have in his possession, or shall receive from any other person, any forged promissory note or notes, or bank bill or bills, for the payment of money or property,

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with intention to pass the same, or procure the same to be uttered, or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this Territory or not, knowing the same to be forged or counterfeited, or shall have and keep in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to filled up and completed, in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in this Territory or elsewhere, shall, on conviction thereof, be punished by imprisonment in the Territorial prison, for a term not less than one year nor more than fourteen years.

SEC. 82. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this Territory, or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession with the intention to utter, pass, or publish any fictitious bill, note or check purporting to be the bill, note or check, or other instrument in writing for the payment of money or property of some bank corporation, copartnership, or individual, when in fact there shall be no such bank, copartnership, or individual in existence, the said person knowing the said note, bill, check, or instrument in writing for the payment of money or property, to be fictitious, shall be deemed guilty of forgery, and on conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than fourteen years.

SEC. 83. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or other thing whatever made use of in counterfeiting the coin now made current, or hereafter to be made current in this Territory, or in counterfeiting bank notes or bills, upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machine intended for the purpose aforesaid, shall be destroyed.

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SEC. 84. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 85. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

SEC. 86 Every person who shall fraudulently forge or counterfeit the seal of this Territory, or the seal of any court or pubilc officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or seal of any corporation, or shall unlawfully and corruptly, and with evil intent, affix any of the true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeit, and shall thereof be convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

SEC. 87. If any person shall counterfeit any kind or species of gold dust, or silver or gold bullion or bars, lumps, pieces or nuggets of gold or silver of any description whatever, of uncoined gold or silver, currently passing in this Territory, or shall utter or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver, as aforesaid, knowing the purpose for which said instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver, as aforesaid, every such person so offending shall be deemed guilty of counterfeiting, and upon conviction thereof. shall be punished by imprisonment in the Territorial prison for a term of not less than one year nor more than fourteen years.

SEC. 88. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, silver or gold bullion or bars, lumps, pieces, or nuggets of gold or silver of any

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description whatever of uncoined gold or silver, currently passing in this Territory, or entering in any wise into the circulating medium of this Territory, with the intention to pass, utter, or put off the same, or permit, cause, or procure to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

CHAPTER VIII.

Crimes and Offences against Public Justice.

Sec. 89. Every person having taken a lawful oath or made affirmation in any judicial proceeding, or in any other matter where by law an oath or affirmation is required, who shall swear or affirm, wilfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury, as the case may be, and upon conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

Sec. 90. Every person who by wilful and corrupt perjury, or surbornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed guilty of murder, and upon conviction thereof shall suffer the punishment of death.

Sec. 91. If any person or persons shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security, for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or justice of the peace, acting within this Territory, or to corrupt, induce, or influence such judge or justice of the peace to be more favorable to one side than the other, in any suit, matter or cause, pending, or to be brought before him or them; or shall directly or indirectly give any sum of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, to ob-

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tain, procure, or influence any member of the legislative assembly, or to incline, induce, or influence any such member of the legislative assembly to be more favorable to one side than the other on any question, election, matter, or thing pending, or to be brought before the legislature, or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation, or security, with intent, and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly, who shall accept or receive the same, shall be deemed guilty of bribery, and on conviction shall be punished by imprisonment in the Territorial prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust, or profit in this Territory.

SEC. 92. If any person shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, or security for the payment of any money, present, or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, member of the legislative assembly, or other officer, ministerial or judicial, or assessor (but such fees as are allowed by law), the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, shall be deemed guilty of bribery, and on conviction thereof shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years, and shall be disqualified from holding any office of honor, trust, or profit in this Territory.

SEC. 93. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, in any of the cases mentioned in the preceding sections; and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall on conviction, be imprisoned in the Territorial prison for a term not less than five years nor more than ten years, and shall be disquali-

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fied from holding any office of honor, trust, or profit in this Territory.

SEC. 94. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer or assessor, or any person whosoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and wilfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface or falsify any document or instrument recorded, or any registered acknowledgment or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever of, or belonging to, any public officer in this Territory, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years, and be fined in any sum not exceeding five thousand dollars.

SEC. 95. Every sheriff or jailor, or person who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and shall be removed from office.

SEC. 96. If any officer whose office shall be abolished by law, or who after the expiration of the time for which he may be appointed or elected, or after he shall have resigned, or been legally removed from office, shall wilfully and unlawfully withhold or detain from his successor, or other person entitled thereunto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate or destroy or take away the same, the person so offending shall, on conviction, be punished by imprisonment in the Territorial prison for a term not less than one year nor more than ten years. The provisions of this section shall apply to any person who shall have such records, documents, papers, or other writings in his, her, or their possession, and shall wilfully mutilate, destroy, withhold, or detain the same as aforesaid.

SEC. 97. Every person who shall falsely represent or personate another, and in such assumed character shall marry another, become bail or security for any party, in any proceeding civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of

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any conveyance of real estate, or any other instrument which by law may be recorded, or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs, or sums of money, or his right or interest may in any manner be affected, shall, upon conviction, be punished by imprisonment in the Territorial prison for a term not less than one year nor exceeding two years, or by fine not exceeding five thousand dollars.

SEC. 98. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money or property so received.

SEC. 99. If any person shall knowingly and wilfully obstruct, resist, or oppose any sheriff, deputy sheriff, coroner, constable, marshal, policeman, or other officer of this Territory, or other person duly authorized serving or attempting to serve any law process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any such officer or person, duly authorized, in serving or executing, or attempting to serve or execute any order or process as aforesaid, or for having served or executed, or attempting to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the Territorial prison for a term not less than one year nor more than five years. *Provided*, Any officer or person that may assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

SEC. 100. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years; and if any person or persons set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is imprisonment in the Territorial prison, or in prison, the person so offending, on conviction thereof, shall be

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sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

SEC. 101. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offence, or any crime punishable in the Territorial prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the Territorial prison not less than one year nor exceeding ten years; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor, or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

SEC. 102. If any sheriff, deputy sheriff, or jailor, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the Territorial prison not less than one year nor more than ten years, and fined in a sum not exceeding ten thousand dollars.

SEC. 103. If any person shall carry to any convict imprisoned or in custody or into any county jail, or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisonment in the Territorial prison not less than one year nor more than five years.

SEC. 104. If any person or persons shall rescue another in lawful custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

SEC. 105. If any person shall aid or assist a prisoner, lawfully imprisoned or detained in custody for any offence against this Territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey, or cause to be delivered to such prisoner, any disguise, instrument, or arms proper to facilitate the escape of such prisoner, any person

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so offending, although no escape or attempt to escape be actually made, shall, on conviction, be punished by fine not exceeding five thousand dollars, and imprisoned in the Territorial prison not less than one year nor more than five years.

SEC. 106. If any sheriff, coroner, jailor, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the Territorial prison not less than one year nor exceeding five years: *Provided*, That if such person be in custody charged with murder, or other capital offence, then such officer or person suffering or permitting such escape shall be punished by imprisonment in the Territorial prison for any term not less than one year nor more than ten years. A negligent escape of a criminal charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than five years, or shall be fined in a sum not less than one thousand nor more than five thousand dollars.

SEC. 107. If any sheriff, coroner, keeper of a jail, constable, or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, such sheriff, coroner, jailor, constable, or other officer, so offending, shall, on conviction, be fined in any sum not less than one thousand nor more than five thousand dollars, and imprisoned in the Territorial prison not exceeding five years.

SEC. 108. Every person having a knowledge of the actual commission of any offence punishable by imprisonment in a county jail or by fine, or of any misdemeanor or violation of any statute, for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity, or reward, or any engagement or promise therefor, upon any agreement or understanding, expressed or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution thereof, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months: *Provided*,

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That this section shall not apply to those offences which may be lawfully compromised by leave of the court.

SEC. 109. If two or more persons shall conspire, either to commit any offence, or falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence, or falsely to move or maintain any suit, or to cheat or defraud any person of any property, by any means which if executed would amount to a cheat, or to obtain money or property by false pretence, or to cheat or defraud any person of any property by any means which are in themselves criminal, or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for perversion or obstruction of justice, or due administration of the laws, they shall, on conviction, be punished by imprisonment in the county jail not more than six months, or by a fine of not more than one thousand dollars: *Provided*, That it shall not be necessary, to procure conviction under this section, to prove any overt act done in pursuance of such conspiracy.

SEC. 110. If any person shall wilfully take upon himself to exercise or officiate in any office or place of another, in this Territory, without being lawfully authorized thereto, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 111. Embracery is an attempt to influence a juror or jurors corruptly to one side, by threat or menace, or by promise or persuasion, entreaty, money, or the like. Every embracer, who shall directly or indirectly promise or offer to any juror, or procure any juror to take money, or any other bribe, present, or reward, or any contract, obligation or security for the payment or delivery of any money, present or reward, or any other thing, or shall corruptly influence or attempt to influence any juror, shall, on conviction, be fined in a sum not exceeding five thousand dollars, or imprisoned in the Territorial prison not less than one year, nor exceeding five years. Any juror convicted of taking any money, present, reward, or any other thing, or corruptly being influenced as aforesaid, shall suffer the like imprisonment, and be forever disqualified to act as a juror. This section shall apply as well to the grand, as the trial jurors.

SEC. 112. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer, or assessor of this Territory, minis-

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terial or judicial, shall wilfully receive or take any fee or reward, to do or execute his duty as such officer, except such as is or shall be allowed by law; or if any such officer shall wilfully or corruptly ask or demand as a condition precedent to the performance of his duties as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and on conviction, shall be fined in any sum not less than two hundred dollars, and not more than one thousand dollars, and on conviction removed from office.

SEC. 113. If any justice of the peace, constable of the same township, shall, directly or indirectly, purchase any judgment or part thereof, on the docket of such justice, or any docket in his possession, he shall, upon conviction thereof, be fined in each offence in any sum not less than one hundred dollars, nor more than one thousand dollars.

SEC. 114. Every person holding or receiving any office under the laws and Constitution of this Territory, who shall for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum, not exceeding five thousand dollars, and shall forfeit his office, and be disabled from holding such office; and every person who shall give, or make any agreement to give any reward or gratuity, in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not less than five hundred, nor exceeding five thousand dollars.

SEC. 115. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his house, or other property; or to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities, though no money, goods, chattels, or valuable thing, be demanded, such person so offending shall, on conviction, be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

SEC. 116. Every person who shall wilfully open or read, or cause to be read, any sealed letter not addressed to himself, without

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being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed; and every person who shall maliciously publish the whole or any part of such letter, without the authority of the writer thereof, or of the person to whom the same was addressed, knowing the same to have been opened, shall, upon conviction, be punished by fine not exceeding one thousand dollars.

CHAPTER IX.

OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

SEC. 117. If any person shall wilfully and maliciously disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarrelling, challenging to fight, or fighting; every person convicted thereof, shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding two months.

SEC. 118. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge or justice of the peace, sheriff, coroner, constable, or other public officer, the persons so offending shall, upon conviction, be severally fined in any sum not exceeding five hundred dollars and imprisoned in the county jail not exceeding six months.

SEC. 119. If two or more persons shall by agreement fight in a public place, to the terror of the citizens of this Territory, the persons so offending shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the county jail not more than one month.

SEC. 120. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such persons shall be deemed guilty of an unlawful assembly, and upon conviction thereof, shall be fined severally in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months.

SEC. 121. If two or more persons meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it,

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they shall be deemed guilty of a riot, and on conviction shall be severally fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months; and if two or more persons shall actually do an unlawful act of violence, either with or without a common cause of quarrel, or even do an unlawful act in a violent, tumultuous and illegal manner, they shall be deemed guilty of a riot, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each, or be imprisoned in the county jail for any term not exceeding six months, or both such fine and imprisonment

SEC. 122. Every person who shall wilfully disquiet or disturb any congregation, or assembly of people, met for religious worship, by making a noise, or by rude or indiscreet behavior, or profane discourse within their place of worship, or so near the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by a fine not less than five hundred dollars, or by imprisonment in the county jail not exceeding three months.

SEC. 123. Every person who shall erect or keep a booth, tent, stall, or other contrivance, for the purpose of selling or otherwise disposing of any wine, or spirituous or fermented liquors, or any drinks of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars.

SEC. 124. If any judge, justice of the peace, sheriff, or other officer, bound to preserve the public peace, shall have knowledge of an intention on the part of two persons, to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

SEC. 125. A libel is a malicious defamation expressed either by printing, or by signs or pictures, or the like, intended to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule. Every person, whether the writer or publisher,

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convicted of the offence, shall be fined in a sum not exceeding five thousand dollars, or imprisoned in the county jail, not exceeding six months. In all prosecutions for libel the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

CHAPTER X.

Offences Against Public Morality, Health, and Police.

Sec. 126. Bigamy consists in having two wives, or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this Territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and be imprisoned in the Territorial prison not less than one year, nor more than five years. It shall not be necessary to prove either of the said marriages by the register, and certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this Territory, cohabitation in this Territory, after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is, or shall be, at the time of the second marriage, divorced by lawful authority from the bond of such former marriage, or to any person, when the former marriage has been by lawful authority rendered void.

Sec. 127. If any man or woman, being unmarried, shall knowingly marry the wife or husband of another, such man or woman shall, upon conviction, be fined not less than one thousand dollars, or imprisoned in the Territorial prison, not less than one year,

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nor more than two years. Any man and woman who shall live together in an open state of adultery or fornication, shall be indicted, and on conviction shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the Territorial prison not exceeding one year.

SEC. 128. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the Territorial prison not less than one nor exceeding ten years.

SEC. 129. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common, street, or alley, of any city, town, or village, or any public bridge or causeway, mill race, mill dam, or ditch, or public river or stream, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall in any wise pollute or obstruct any water course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the county, town, city, village, or neighborhood thereabouts, every person so offending shall, upon conviction, be fined not exceeding one thousand dollars; and every such nuisance may, by order of the court before whom the conviction may take place, or of the district court, be removed and abated by the sheriff of the county.

SEC. 130. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any poisonous or adulterated drink or liquor, every person so offending shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months.

SEC. 131. If any person shall intentionally deface or obliterate, tear or destroy, in whole or in part, any record, copy, or transcript, or extract from or of any law of the United States, or of this Territory, or any proclamation, advertisement, or notification, set up at any place in this Territory, by authority of any law of the United States, or of this Territory, or by order of any court, such person, on conviction, shall be fined not more than one hundred

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dollars nor less than twenty dollars, or be imprisoned in the county jail not more than one month: *Provided*. This section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, notification, advertisement or order, after the time for which the same was by law to remain set up shall have expired.

SEC. 132. If any person shall have found upon him or her any pick-lock, crow-key, bit, or other instrument or tool, with intent feloniously to crack and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any money, goods and chattels, every person so offending shall, on conviction thereof, be imprisoned in the Territorial prison for a term not less than one year nor more than five years. And if any person shall have upon him or her any pistol, gun, knife, dirk-knife, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

SEC. 133. Every male person above eighteen years of age, who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in arresting or taking any person or persons against whom there may be issued any process, or by neglecting to aid or assist in re-taking any person or persons who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by the sheriff, deputy sheriff, coroner, constable, judge, justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum, not less than fifty, nor more than one thousand dollars, or shall be imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment.

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CHAPTER XI.

OFFENCES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

SEC. 134. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same; or to any bond, suit, judgment or execution, contract or conveyance had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being parties as aforesaid, at any time shall willingly put in use, avow, maintain, justify or defend the same, or any of them, as true, and done, had or made in good faith, or upon good consideration, or shall alien, assign or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before montioned, to him, her or them conveyed as aforesaid, or any part thereof, he, she or they so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail not less than six months.

SEC. 135. If any person, by false representation of his own wealth or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons obtain credit, and thereby fraudulently get into the possession of goods, wares or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and on conviction shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisonment in the county jail not more than six months.

SEC. 136. If any person or persons shall knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and on conviction shall be fined not exceeding

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one thousand dollars, and imprisoned in the county jail not more than six months, and be sentenced to restore the property so fraudulently obtained, if it can be done.

SEC. 137. Any person or persons after once selling, bartering or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of lands, or town lot or lots, who shall again knowingly or fraudulently sell, barter or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly or fraudulently execute any bond or agreement to sell, or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the territorial prison not less than one year, nor more than five years.

SEC. 138. If any person shall knowingly sell any goods, wares, or merchandise, or any valuable thing, by false weight or measure, or shall knowingly use false measures at any mill in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and on conviction, shall be fined not exceeding two hundred dollars, and imprisoned in the county jail not more than six months.

SEC. 139. If any debtor shall fraudulently remove his property or effects out of this Territory, or shall fraudulently sell, convey, assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

SEC. 140. Any person against whom an action is pending, or against whom a judgment has been rendered, for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of said property or effects, with intent to hinder, delay, or defraud the person bringing such action, or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

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SEC. 141. If any person shall knowingly have, keep, or use any false or fraudulent scales or weights for weighing gold, or gold dust, every person so offending shall be fined in any sum not exceeding one thousand dollars nor less than one hundred dollars, or imprisoned not more than one year, or both, at the discretion of the court.

SEC. 142 If any owner, manager, or agent, of any species of quartz mill, arastra furnace or cupell, employed in extracting gold from quartz, pyrites, or other minerals, who shall neglect or refuse to account for, or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites, or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, he shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisoned not more than one year, or both, at the discretion of the court, for each such offence.

CHAPTER XII.

FRAUDULENT AND MALICIOUS MISCHIEF.

SEC. 143. Every person who shall wilfully administer any poison to any cattle or domestic animal, or maliciously expose any poisonous substance, with intent that the same shall be taken or swallowed by any cattle or domestic animal, shall, upon conviction, be punished by imprisonment in the Territorial prison not less than one year nor exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment

SEC. 144. Every person who shall maliciously kill, maim, or wound, any horse, ox, or other domestic animal, belonging to another. or shall maliciously or cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be punished by fine not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. And every person who shall wilfully, unlawfully. and maliciously destroy, burn, cut, or otherwise injure any goods, chattels, or other property, of any description whatever, belonging to another, shall, upon conviction, be punished by fine not less than five hundred dollars, or by imprison-

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ment in the county jail not exceeding six months, or by both such fine and imprisonment.

SEC. 145. Every person who shall maliciously, unlawfully, and wilfully break, destroy, or injure the door or window of any dwelling-house, shop, store, or other house or building, or sever therefrom any gate, fence, or inclosure, or any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure, or destroy any gate-post, railing or fence, or any part thereof, or cut down, lap, girdle, or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another, shall, on conviction, be fined not more than two hundred dollars, or imprisoned in the county jail not exceeding six months.

SEC. 146. Every person who shall wilfully and maliciously burn or injure any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose, or set adrift any such raft, or part thereof, or shall cut, break, injure, sink, or set adrift, any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

SEC. 147. Every person who shall wilfully and maliciously cut, break, injure, or destroy any bridge, milldam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining, manufacturing, or agricultural purposes, or any embankment necessary to the same, or either of them; or shall wilfully or maliciously make, or cause to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisoned in the Territorial prison not less than one year, nor more than two years, or both such fine and imprisonment.

SEC. 148. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of said jail, or other place of confinement so destroyed, or of such injury as may have

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been done thereto by such unlawful act, and be imprisoned in the Territorial prison for any term not exceeding five years nor less than one year.

SEC. 149. If any person or persons shall wilfully and intentionally, or negligently or carelessly set on fire, or cause or procure to be set on fire, any wood, prairie, grass, or other land or ground in this Territory, every person so offending shall, on conviction before any court of competent jurisdiction, be fined in any sum not less than two hundred nor more than one thousand dollars, or be imprisoned in the county jail not less than ten days nor more than six months, or both such fine and imprisonment, in the discretion of the jury trying the case: *Provided*, That this section shall not extend to any person or persons who shall set on fire any wood, prairie, grass, or other lands adjoining to their own farm, house, plantation, or inclosure, for the necessary preservation thereof from accident or injury by fire, by giving to his, her, or their neighbors reasonable notice of such intention.

CHAPTER XIII.

MISCELLANEOUS OFFENCES.

SEC. 150. If any person or persons, association, company, or corporation, shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company or corporation, or the person or persons forming the same, shall, for the first offence, be deemed guilty of a misdemeanor, and for each and every subsequent offence, be deemed guilty of a felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this act, shall be punished, for the first offence, by imprisonment in the county jail, not more than three months, or by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second, and every subsequent offence, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than five years, at the discretion of the court before whom such person or persons may be tried and convicted. It shall be the duty of the district attorney

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for each judicial district in the Territory, to prosecute all offences against this act,; and it shall be the duty of the judges of the courts to give this law in the charge of the grand jury, who shall inquire into and present all violations thereof.

SEC. 151. Any person or persons who shall vend by wholesale or retail, any spirituous or malt or vinous liquors, or any goods, wares or merchandise, within any county in this Territory, without first obtaining a license so to do, as required by law, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction, be fined in any sum not less than twenty-five dollars nor more than two hundred dollars, for each and every offence. Any justice of the peace of the county in which such offence is charged to have been committed, shall have jurisdiction to try and determine the same. Upon the trial of any criminal action provided for by this act, the defendant shall be deemed not to have procured any such license, unless he prove the contrary to the satisfaction of the court or jury by whom the same is tried. All fines collected under this act shall be paid into the treasury of the county in which the conviction is had.

CHAPTER XIV.

GENERAL PROVISIONS.

SEC. 152. All offences recognized by the common law as crimes and not here enumerated, shall be punished, in case of felony by imprisonment in the Territorial prison for a term not less than one year nor more than five years; and in case of misdemeanor by imprisonment in the county jail for a term not exceeding six months nor less than one month, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. And whenever any fine is imposed for any felony or misdemeanor, whether such be by statute or at common law, the party on whom the fine is imposed shall be committed to the county jail, when not sentenced to the Territorial prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars until such fine is paid.

SEC. 153. Until a Territorial prison is provided, the county jail of each county shall be deemed the Territorial prison.

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SEC. 154 A sentence of imprisonment in the Territorial prison for a term less than life, suspends all civil rights of the person so sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority and powers; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead.

SEC. 155. When the term "person" is used in this act to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this Territory, or any other Territory or State government, or county, which may lawfully own any property within this Territory, and all public and private corporations, as well as individuals.

SEC. 156. The provisions of this act shall extend to females.

SEC. 157. When any intent to injure, defraud or cheat, is required by law to be shown, in order to constitute any offence, it shall be deemed sufficient if such intent be to injure, defraud or cheat, the United States, this Territory, or any other State, Territory, or county, or the government, or any public office thereof, or any county, city, or town, or any corporation, body politic, or private individual.

SEC. 158. If any person who has been sentenced to confinement in the Territorial prison by any court having competent authority within this Territory, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or her apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the Territorial treasury.

SEC. 159. Every person who shall attempt to commit a public offence, and in such attempt shall do any act toward the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, in cases where no provision is made by law for the punishment of such attempt, be punished as follows: First, If the offence so attempted to be committed be such as is punishable by death, or by imprisonment in the Territorial prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the Territorial prison not exceeding ten

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years. Second, If the offence so attempted is a misdemeanor, the person so convicted shall be punished by a fine not exceeding one-half of the largest amount, or by imprisonment in the county jail or Territorial prison, as the case may be, for a term not exceeding one-half the longest time prescribed by law, upon a conviction of the offence so attempted. Third, If the offence so attempted is a felony not punishable by death or imprisonment which may extend to life, the person convicted of such offence shall be punished by imprisonment in the Territorial prison not exceeding one-half the longest time which may be imposed on conviction of the offence so attempted.

SEC. 160. This act shall take effect from and after its passage.

AN ACT to regulate proceedings in criminal cases in the courts of justice in the Territory of Montana.

CHAPTER I.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace, and in the execution of that power to require persons to give security to keep the peace in the manner herein provided: The judges of the supreme court throughout the Territory, probate judges and justices of the peace in their respective counties, the mayors or other officers, invested with judicial powers, of incorporated cities and towns within the limits of such corporation.

SEC. 2. Whenever complaint shall be made in writing, and upon oath, to any such magistrate, that any person has threatened, or is about to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complainant, and any witnesses who may be produced, on oath; to reduce such examination to writing, and cause the same to be subscribed by the parties so examined.

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SEC. 3. If it appear upon such examination that there is reason to fear the commission of any such offence by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without seal, stating the complainant's name, and the offence charged, and commanding the officer to whom it is directed forthwith to arrest the person complained of and bring him before such magistrate.

SEC. 4. Upon such person being brought before such magistrate, it shall be his duty to examine all witnesses which either party may require to be examined; and if it shall appear to the satisfaction of such magistrate that there is reason to fear the commission of such offence, he shall require the person complained of to enter into a recognizance in such sum, not exceeding five thousand dollars, as such magistrate shall direct, with one or more sufficient sureties, conditioned that he will keep the peace toward the inhabitants of this Territory, and particularly toward the complainant, for such length of time as the magistrate may designate, not to exceed one year, which bond shall be filed by the magistrate with the clerk of the district court of the county in which it was taken, and shall be by such clerk recorded in the order book.

SEC. 5. If such recognizance be given, the party complained of shall be discharged; but if he fail or refuse to find surety, it shall be the duty of the magistrate to commit him to prison until he find the same, specifying in the warrant the cause of commitment and the sum in which surety was required.

SEC. 6. Any person committed for not finding surety, as above provided, may be discharged by any magistrate authorized to bind to the peace within the county, upon giving such security as was originally required of such person.

SEC. 7. Every person who in the presence of any magistrate above specified, or of any court of record, shall make any affray, or threaten to kill or beat another, or to commit any offence against his person or property, and all persons who in the presence of such court or magistrate shall threaten to commit any offence, may be ordered by such magistrate or court, without any other proof, to give such security as above specified, and in case of failure or refusal so to do, he may be committed in like manner as hereinbefore provided.

SEC. 8. Upon the violation of any of the conditions of any

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bond taken, as herein provided, the district attorney may institute suit therein in any court having jurisdiction; and if the defendant shall have been convicted of any offence which would amount to a violation of such bond, the record of such conviction shall be sufficient evidence of forfeiture of such recognizance.

SEC. 9. If any person complained of shall be discharged by the magistrate before whom the examination is had, the complainant may, in the discretion of the magistrate, be adjudged to pay the costs.

SEC. 10. Any complainant against whom costs are adjudged, may appeal from such decision to the district court of the county upon filing a bond, to be approved by the magistrate, that he will pay all costs that may be awarded against him in the district court.

SEC. 11. The case shall be heard in the district court, as hereinbefore provided for trial of such cases, on appeal by the defendant. If the defendant be in court, the court may order that he enter into bonds, and if not in court, may order that a warrant be issued for his arrest, and that he be held in custody until he give such bond.

LOCAL JURISDICTION OF CRIMES.

SEC. 12. Offences committed against the laws of this Territory shall be punished in the county in which the offence is committed, except as may be otherwise provided by law.

SEC. 13. Every person being without the Territory, committing or consummating any offence by an agent or other means within the Territory, is liable to be punished by the laws thereof in the same manner as if he were present and had commenced and consummated the offence within the Territory.

SEC. 14. When a crime has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offence occur in two or more counties, the jurisdiction is in either county.

SEC. 15. When a crime is committed in this Territory, or on the boundary thereof, on board a boat or vessel navigating a river, or lying therein, the jurisdiction is in any county within or bordering on the line of said river on which the offence is committed.

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SEC. 16. That the jurisdiction of the following cases is in any county in which the offence was committed, or into or out of which the person upon whom the offence was committed has been brought: First, For forcibly or fraudulently taking, inveigling or kidnapping any negro or mulatto, to be sent out of the Territory to be sold as a slave or held to service. Second, For taking or enticing away any female for the purpose of prostitution. Third, For taking, decoying, or enticing away a child under the age of fifteen years, with intent to detain or conceal it from its parents, guardian, or other person having lawful charge of the child.

SEC. 17. When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another county, the jurisdiction is in either county.

SEC. 18. An accessory before or after the facts may be punished in the county where he committed the offence, or in the county where the principal offence was committed.

SEC. 19. That if any mortal wound is given, or poison administered, in one county, and death by means thereof ensues in another, the jurisdiction is in either county.

LIMITATION OF CRIMINAL ACTIONS.

SEC. 20. Prosecutions for murder and manslaughter may be commenced at any time after the commission of the offence.

SEC. 21. Prosecutions for an offence must be commenced within six months after its commission when the penalty cannot exceed a fine of ten dollars.

SEC. 22. In all cases of misdemeanor, prosecutions therefor must be commenced within three years after its commission; and in cases of felony, except murder and manslaughter, prosecution must be commenced within five years.

SEC. 23. If any person who has committed an offence is absent from the Territory, after the commission thereof, or so conceal himself that process cannot be served upon him, the time of the absence or concealment is not to be included in computing the period of limitation.

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Arrest and Examination of Offenders.

Sec. 24. For the apprehension of persons charged with offences, the magistrates mentioned in the first section of this act are authorized to issue process to carry into effect the provisions of this chapter.

Sec. 25. Upon complaint being made to any such magistrate that a criminal offence has been committed, he shall examine, on oath, the complainant, and any witness produced by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it appear that any such offence has been committed, the magistrate shall issue a warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to take the person accused and bring him before such magistrate, or before some other magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall therein be named, to appear and give evidence on the examination.

Sec. 26. Upon complaint being made to any magistrate of any county of this Territory that a criminal offence has been committed, and that the offender has fled from the county in which the offence was committed, such magistrate shall issue a warrant, directed to an officer of his own county, requiring the offender to be apprehended and taken before some magistrate of the county where the offence was committed, to be dealt with according to law.

Sec. 27. If any person against whom a warrant may be issued for an alleged offence committed in any county, shall, either before or after the issuing of such warrant, escape or be out of the county, the officer to whom the warrant is directed may pursue and apprehend the party charged in any county in this Territory, and for that purpose may command aid and exercise the same authority as in his own county.

Sec. 28. In cases where the offence charged in the warrant is not punishable with death or imprisonment in the Territorial prison, if the person requests that he may be brought before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance, without a trial or examination, the officer

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making the arrest shall take him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offence, and next to be holden in the county where it shall be alleged to have been committed, and the party arrested shall thereupon be liberated.

SEC. 29. The magistrate who shall let the person arrested to bail, shall certify the fact upon the warrant, and shall deliver the same, with the recognizance by him so taken, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and on application of the complainant the magistrate who issued the warrant shall cause such witnesses to be summoned to the same court as may be by him deemed necessary.

SEC. 30. If the magistrate in the county where the arrest was made shall refuse to admit to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or in his absence before some other magistrate of the county in which the warrant was issued, to be proceeded with according to law.

SEC. 31. When the offence charged in any warrant is punishable with death, or imprisonment in the Territorial prison, the officer making the arrest in some other county, shall convey the prisoner to the county where the warrant was issued, and he shall be proceeded with in the manner directed by law.

SEC. 32. Every person arrested by warrant for any offence where no other provision is made for his examination thereon, shall be brought before some magistrate of the same county, and the warrant, with the proper return thereon, signed by the person who made the arrest, shall be delivered to such magistrate.

SEC. 33. Any magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without the consent of the person charged, and to the same or a different place in the county, as he shall think proper; and in such case, if the party is charged with a capital offence, he shall be committed in the meantime; otherwise he may be recognized in a sum, and with sureties, to the

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satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

SEC. 34. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance with the record of such default, to the district court; and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

SEC. 35. When such person shall fail to give bail, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate, by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

SEC. 36. The magistrate before whom any person so brought upon a charge of having committed an offence, shall, immediately examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matter connected with such charge, which may be deemed pertinent.

SEC. 37. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

SEC. 38. The magistrate, while examining any witness, may at his discretion exclude from the place of examination, all other witnesses; he may also if requested, or if he see cause, direct the witnesses for or against the prisoner, to be kept separate so that they cannot converse with each other, until they shall have been examined.

SEC. 39. The testimony of the witnesses examined, may be reduced to writing by the magistrate, or under his control, when he shall think it necessary, and shall be signed by the witnesses, if required by the magistrate.

SEC. 40. If it shall appear to the magistrate upon the whole

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examination, that no offence has been committed, or that there is not probable cause for charging the prisoner with the offence, he shall be discharged.

SEC. 41. Persons charged with an offence punishable with death, shall not be admitted to bail when the proof is positive, or the presumption great, but, for all other offences, bail may be taken for such sums, as in the opinion of the magistrate, will secure the appearance of the person charged with the offence, at the court where such person is to be tried.

SEC. 42. If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty, and if the offence be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken, and the prisoner discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed for trial.

SEC. 43. When the prisoner is admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next term of court having cognizance of the offence, and in which the prisoner is held to answer.

SEC. 44. If any magistrate shall be satisfied that there is good cause to believe that any such witnesses will not perform the condition of their recognizance, unless other security be given, such magistrate may order the witnesses to enter into a recognizance with such sureties as may be deemed necessary to insure their appearance at court.

SEC. 45. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness; or the magistrate may in his discretion take the recognizance of such married woman or minor, in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 46. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

SEC. 47. Any judge of a court of record, on application of any prisoner committed for a bailable offence, may inquire into the case and admit such prisoner to bail, and any person committed for not

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finding sufficient sureties or refusing to give bail, may be admitted to bail by either of said judges or by the committing magistrate.

SEC. 48. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may together, execute the powers and duties before mentioned.

SEC. 49. All examinations and recognizances taken by any magistrate as provided herein, shall be certified and returned by him to the clerk of the court having jurisdiction of the offence, and to which the party charged is required to appear, on or before the first day of the next term thereof, and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and in case of disobedience may be punished as for contempt.

SEC. 50. When any person under recognizances in any criminal prosecution, either to appear and answer, or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and judgment entered against him, for the amount of such bond, and proceedings may be taken to recover judgment against any or all of the sureties thereto, in any court having jurisdiction.

SEC. 51. Any surety in such recognizance may be discharged from any liability thereon, at any time before final judgment against him, upon surrendering to the court or the proper officer, the principal in such recognizance, or by paying to the clerk of the court the amount for which he was bound as surety, with such costs as the courts shall direct.

SEC. 52. No action brought on a recognizance shall be barred or defeated, nor shall judgment thereon be arrested, by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default happened, nor by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court, or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

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GRAND JURIES AND THEIR PROCEEDINGS.

SEC. 53. The grand jury shall consist of twelve persons, one of whom shall be appointed foreman by the court, and the court in every case, where the foreman shall be discharged or excused, on any account, before the grand jury is dismissed, shall appoint another foreman.

SEC. 54. An oath or affirmation shall be administered to the grand jury, in substance as follows:

You, and each of you do solemnly swear (or affirm) that you will diligently inquire into and true presentment make, of all public offences against the laws of this Territory, committed or triable in this county, of which you have or can obtain legal evidence. You will present no one through hatred, malice, or ill-will; nor leave any unpresented through fear, favor or affection, or for any reward, or the promise or hope thereof, but in all your presentments, you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God.

SEC. 55. No grand juror shall act as such, on the investigation of any charge against any person held to answer to a criminal offence, when such grand juror is the prosecutor, or a material witness against such person; and it shall be the duty of the court, in its charge to the grand jury, to so charge them; and for a violation of this section, any grand juror may be proceeded against as for contempt.

SEC. 56. The foreman of every grand jury, from the time of his appointment to his discharge, shall be authorized to administer any oath, declaration or affirmation, in the manner prescribed by law, to any witness who shall appear before such grand jury for the purpose of giving evidence of any matter cognizable by them.

SEC. 57. Every grand jury may appoint one of their number ro be clerk thereof, to preserve minutes of their proceedings, and of the evidence given before them, which minutes shall be given to the attorney prosecuting in the county, when so directed by the grand jury.

SEC. 58. Whenever required by any grand jury, it shall be the

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duty of the attorney prosecuting in the county, to attend them for the purpose of examining witnesses in their presence, or giving them advice upon any legal matter.

SEC. 59. Such attorney shall be allowed at all times to appear before the grand jury, on his request, for the purpose of giving information relative to any matter cognizable by them, when they or he shall deem it necessary, but no such attorney, or any other officer or person except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes, on any matter before them.

SEC. 62. Whenever required by any grand jury, the foreman thereof, or the attorney prosecuting, the clerk of the court in which such jury is empanelled, shall issue subpœnas and other processes to bring witnesses to testify before such grand jury.

SEC. 61. If any witness duly summoned to appear and testify before a grand jury, shall fail or refuse to obey, the court shall cause compulsory process to be issued, to enforce his attendance, and may punish the delinquent in the same manner and upon like proceedings as provided by law for disobedience of a subpœna in other cases.

SEC. 62. If any witness appearing before a grand jury, shall refuse to testify, or answer interrogatories in the course of his examination, the fact shall be communicated to the court, in writing, in which, the question refused to be answered shall be stated, and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

SEC. 63. If the court determine that the witness is bound to answer, and he persist in his refusal to testify, he shall be brought before the court, who shall proceed therein, in the same manner as if the witness had been interrogated, and refused to answer, in open court.

SEC. 64. If any such witness shall be committed for a contempt, on account of his refusal to testify, and shall persist in such refusal until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged from custody before the meeting of the next grand jury, when he shall be again brought before said grand jury, and if he fail or refuse again, to testify, he shall be recommitted.

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SEC. 65. If any offence be discovered or committed during the sitting of any court after the grand jury attending such court shall be discharged, or if the grand jury empanelled is not competent as such to investigate the charge against any person held to answer for the offence, such court may, in its discretion, by an order, to be entered on its minutes, direct the sheriff to summon another grand jury.

SEC. 66. The sheriff shall accordingly, forthwith summon such grand jury, from the inhabitants of the county, qualified to serve as grand jurors; who shall be returned and sworn, and shall proceed in the same manner in all respects, as provided by law, in respect to other grand juries.

SEC. 67. Members of the grand jury may be required by any court, to testify, whether the testimony of a witness examined before such grand jury is consistent with, or different from the answers given by such witness, before such court, and they may also be required to disclose the testimony given before them, by any person upon a complaint against such person, for perjury, or upon his trial for such offence.

SEC. 68. No member of the grand jury shall be compelled, or allowed, to testify or disclose, in what manner he or any other member of the grand jury voted, on any question before them, or what opinions were expressed by any juror, in relation to any such question.

SEC. 69. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, except, when lawfully required to testify as a witness, in relation thereto, nor shall he disclose the fact of any indictment, having been found against any person for a felony, not in actual confinement, until the defendant shall have been arrested thereon. Any juror violating the provisions of this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, may be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment not exceeding six months.

SEC. 70. In charging grand juries, the court shall apprise them of the last three sections, in relation to disclosures, and in what case, and under what circumstances, any disclosures may or may not be made.

SEC. 71. No indictment can be found without the concurrence

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of at least nine grand jurors. When so found, and not otherwise, the foreman of the grand jury shall indorse it thus, "A true bill. A. B., foreman."

SEC. 72. When there is not a concurrence of nine grand jurors, in finding an indictment, the foreman shall certify under his hand, that such indictment, is not a true bill.

SEC. 73. Indictments found by a grand jury, shall be presented by their foreman, in their presence, to the court; and shall be filed and remain as records of such court.

SEC. 74. No indictment for any trespass against the person or property of another, not amounting to a felony, or for the first offence of petit larceny, shall be preferred, unless the name of a prosecutor is indorsed thereon, except when the same is preferred upon the information or knowledge of two or more of the grand jurors, or on the information of some public officer in the necessary discharge of his duty, in which case, a statement of the fact shall be made at the end of the indictment, and signed by the foreman of the grand jury.

SEC 75. The name of the prosecutor shall be indorsed, as such, by himself, or when his name has been certified as prosecutor, with the examination as provided by law, the indorsement may be made by the attorney prosecuting; but no indictment shall be quashed for want of such indorsement, if the same shall be made before the motion to quash is disposed of.

SEC. 76. It shall not be necessary for any grand jury to present any presentment, prior to the presentation of the indictment.

SEC. 77. Each indictment must be signed by the attorney prosecuting; and when the grand jury return any indictment into court, the judge must examine it; and if the foreman has neglected to indorse it "A true bill," with his name signed thereto, or if the attorney prosecuting has neglected to sign his name, the court must cause the foreman to indorse, or the attorney prosecuting to sign it, as the case may require, in the presence of the grand jury.

SEC. 78. When an indictment is presented by the grand jury, the names of all material witnesses must be indorsed upon the indictment; but other witnesses may afterwards be subpœnaed by the Territory; but unless the names of such witnesses be indorsed on the indictment, no continuance shall be granted to the Territory,

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on account of the absence of any witness whose name is not thus indorsed.

INDICTMENTS AND PROCESS THEREON.

SEC. 79. All criminal prosecutions must be in the name of the Territory of Montana.

SEC. 80. The forms of pleading in criminal actions in the district court, and the rules by which the sufficiency of pleading is to be determined, are those herein prescribed.

SEC. 81. The only pleading on the part of the Territory is the indictment.

SEC. 82. The indictment must contain, First, The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties. Second, A statement of the facts constituting the offence, in plain and concise language, without repetition.

SEC. 83. The indictment must be direct and certain, as it regards the party and the offence charged.

SEC. 84. The precise time of the commission of an offence need not be stated in the indictment, but it is sufficient if shown to have been within the statute of limitations, except where the time is an indispensible ingredient of the offence.

SEC. 85. In an indictment for an offence committed in relation to property, it is sufficient to state the name of any one, or names of several joint owners.

SEC. 86. The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

SEC. 87. Words used in the statute to define a public offence need not be strictly pursued, but other words conveying the same meaning may be used.

SEC. 88. The indictment shall be sufficient if it can be understood therefrom, First, That the indictment was found by the grand jury of the county in which the court is held. Second, That the defendant is named or described in an indictment as a person whose name is unknown to the grand jurors. Third, That the offence was committed within the jurisdiction of the court, or is triable

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therein. Fourth, That the offence charged is clearly set forth in plain and concise language, without repetition. And, Fifth, That the offence charged is stated with such a degree of certainty that the court may pronounce judgment, upon conviction, according to the right of the case.

SEC. 89. No indictment shall be quashed or set aside for any of the following defects: First, For a mistake in the name of the court or county, or in the title thereof. Second, For the want of an allegation of the time and place of any material fact, when the venue and time have once been stated in the indictment. Third, That the dates and numbers are represented by figures. Fourth, For an omission of any of the following allegations, viz: with force and arms, contrary to the form of the statute, or against the peace and dignity of the Territory of Montana. Fifth, For an omission to allege that the grand jurors were impanelled, sworn or charged. Sixth, For any surplusage or repugnant allegation, when there is sufficient matter alleged to indicate the crime and person charged. Nor, Seventh, For any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

SEC. 90. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the indictment.

SEC. 91. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to allege, generally, that the judgment or determination was duly made, or had, before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

SEC. 92. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title, and the day of its approval; and the court shall take notice thereof.

SEC. 93. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

SEC. 94 Any person who counsels, aids, or abets in the commission of any offence, may be charged, tried and convicted, in the same manner as if he were a principal.

SEC. 95. An accessory after the fact, to the commission of a felony, may be indicted, tried, and punished; though the principal be neither indicted nor tried.

SEC. 96. Every indictment must be recorded by the clerk

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during the term at which the same is found, in a book to be kept for that purpose. The judge must compare the record with the original indictments, and certify the correctness thereof. In case the original indictment be lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk, without any delay from that cause.

SEC. 97. In case of the loss or destruction of an indictment, the attorney prosecuting may file in court another indictment, similar to the original, certified to by the clerk of the court; and the prosecution shall proceed, and the trial be had without any delay from that cause.

SEC. 98. Indictments against persons not in custody, or who have not given bail, and the records of such indictments, shall be in the custody of the clerk, cannot be inspected by any person, except the court, the clerk and his deputy, and the attorney prosecuting, until after the arrest of the defendant.

SEC. 99. No grand juror, attorney prosecuting, clerk, judge, or other officer, shall disclose the fact that an indictment is found, until the defendant has been arrested, except, any disclosure that may be necessarily incident to the issue and service of a warrant to arrest the defendant. A violation of this and the next preceding section may be punished as a misdemeanor by fine or imprisonment, or both.

SEC. 100. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offence.

SEC. 101. In all other cases, the defendant may be found guilty of an offence, the commission of which is necessarily included in that with which he is charged in the indictment.

SEC. 102. Counts for murder in the first and second degrees, and for manslaughter, may be joined in the same indictment, and on the trial the defendant may be convicted of either offence.

SEC. 103. When any offence shall be committed upon, or in relation to, any personal property belonging to several partners, or owners, the indictment for such offence shall be deemed sufficient, if it allege such property to belong to any one or more of such partners, or owners, without naming them all.

SEC. 104. An indictment against any accessory to any felony,

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may be found in any county where the offence of such accessory shall have been committed, notwithstanding the principal offence may have been committed in another county, and the like proceeding shall be had therein, in all respects, as if the principal offence had been committed in the same county.

SEC. 105. When an indictment is found, the court may direct the clerk to issue a warrant, returnable forthwith. If no such order be made, the clerk must issue warrants upon all indictments, within ten days after the close of the term. The clerk, at the same time, must issue a summons for the witnesses.

SEC. 106. The warrant shall be issued to the sheriff of the county where the indictment is found, unless the attorney prosecuting direct the warrant to be issued to the sheriff of some other county. Warrants may issue to the sheriffs of different counties at the same time. The sheriff must execute the warrant, and serve the summons immediately, upon the same being delivered to him.

SEC. 107. All offences are bailable by sufficient sureties, except murder, when the proof is positive or the presumption great.

SEC. 108. The court, at each term, must order the amount in which persons charged by indictment are to be held to bail, and the clerk must indorse the amount on the warrant. If no order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the court, and such judge must, thereupon, indorse the amount of bail required; or if there be no such judge in the county, the clerk may fix the amount of bail.

SEC. 109. When writs of attachment are returnable after the close of the term, the court must direct the amount of the bail to be required of the defendant.

SEC. 110. Arrest, is the taking of a person into custody, that he may be held to answer for a public offence.

SEC. 111. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

SEC. 112 The officer must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required.

SEC 113. If, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

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SEC. 114. An arrest may be made on any day or at any time of the day or night. If any person arrested, escape or be rescued, the person from whose custody he made his escape or was rescued, may immediately pursue and retake the defendant, at any time and any place within this Territory. To retake the person escaping or rescued, the person from whose custody he made his escape or was rescued, has the same power to command as is given in cases of arrest.

SEC. 115. Recognizance in criminal cases may be taken in open court, and entered on the order book.

SEC. 116. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and approve the bail. He may administer oaths and examine bail as to sufficiency.

SEC. 117. Every recognizance taken by any peace officer, must be certified by him forthwith, to the clerk of the court, to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and from the time of filing it shall have the same effect as if taken in open court.

SEC. 118. The defendant may, in place of giving bail, deposit with the clerk of the court to which the defendant is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be dischaged from custody.

SEC. 119. When any person is committed for an offence, and the amount of bail is specified in the warrant of commitment, the sheriff may take the recognizance, and approve the bail.

SEC. 120. When a surety desires to surrender his principal, he may procure a copy of the recognizance from the clerk; by virtue of which, the bail, or any person authorized by him, may take the principal, in any county within the Territory.

SEC. 121. The bail, at any time before final judgment against him, on a forfeiture of the recognizance, may surrender his principal in open court, or to the sheriff; and upon payment of all costs, may thereupon be discharged from all further liability upon the recognizance.

SEC. 122. The bail, must deliver a certified copy of the recognizance to the sheriff, with the principal; and the sheriff must accept the surrender of the principal, and acknowledge it in writing.

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SEC. 123. Any defendant so surrendered may give other bail or remain in custody until discharged by due course of law.

SEC. 124. If without sufficient excuse, the defendant neglect to appear for trial or judgment, or upon any other occasion, when his presence in court may be lawfully required according to the conditions of his recognizance, the court must direct the fact to be entered upon the minutes, and the recognizance of bail, or money deposited as bail, as the case may be, shall thereupon be forfeited.

SEC. 125. The attorney prosecuting may, at any time after the adjournment of the court, proceed by action against the bail upon the recognizance. Said action shall be governed by the rules of civil pleading, so far as applicable.

SEC. 126. No action upon a recognizance may be defeated for any defect of form, or any omission of recital, condition or undertaking therein, or neglect of the clerk to indorse or record it, but the sureties shall be bound thereby, to the full amount specified therein. A recognizance may be recorded after execution is awarded.

SEC. 127. Any recognizance forfeited by the prisoner shall be collectable upon execution, although he be afterwards arrested on the original charge; unless remitted by the court for cause shown.

SEC. 128. If any person indicted for a criminal offence, abscond or flee from justice, or cannot be found to be served with process; or being let to bail, shall not appear according to the condition of the recognizance, the cause may be continued from time to time without issuing process on the indictment; and such process may be issued at any time, upon the application of the attorney prosecuting.

ARRAIGNMENT AND OTHER PROCEEDINGS BEFORE TRIAL.

SEC. 129. All indictments shall be tried at the first term at which the defendant appears, unless the same be continued for cause. If the defendant appear, or be in custody at the time at which the indictment is found, such indictment shall be tried at that term, unless continued for cause.

SEC 130. It shall be the duty of the clerk of the court in which an indictment against any person for a capital offence may

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be pending, whenever the defendant shall be in custody, or held by recognizance to answer thereto, to make out a copy of such indictment, and cause the same to be delivered to the defendant or his counsel, at least forty-eight hours before he shall be arraigned on such indictment. If the defendant plead and go to trial without objecting for the want of such copy, the neglect of duty by the clerk shall not be sufficient ground to set aside the verdict.

SEC. 131. Every person who shall be indicted for any offence not capital, who shall have been arrested, or held by recognizance to appear and answer to such indictment, shall, on demand, and on payment of the fees allowed by law therefor, be entitled to a copy of the indictment, and all indorsements thereon.

SEC. 132. If any person about to be arraigned upon an indictment for a felony, be without counsel to conduct his defence, and he be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner, at all reasonable hours.

SEC. 133. The defendant shall be arraigned by reading the indictment to him in open court, unless, such arraignment be waived; and such arraignment, or waiving thereof, shall be noted in the minutes of the court.

SEC. 134. Upon arraignment, the defendant, if he have no other plea, shall plead guilty or not guilty, which plea shall be oral, and entered on the minutes of the court.

SEC. 135. When any person shall be arraigned upon any indictment, and refuse to deny the charge in any form, or confess the same, a plea of *not guilty* shall be entered, and the same proceedings shall be had, in all respects, as if he had formally pleaded not guilty, to such indictment.

SEC. 136. No plea in abatement, or other dilatory plea to an indictment, shall be received by any court, unless the party offering such plea shall prove the truth thereof, by affidavit or other evidence.

SEC. 137. When any matters shall be pleaded to an indictment, as having occurred in any other county than that in which the indictment was found, it shall be tried in the same manner as if it had been alleged to have occurred in the same county where such plea is tendered.

SEC. 138. Every person indicted or prosecuted for a criminal

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offence, shall be entitled to subpœnas, and compulsory process for witnesses, in like manner, and under like circumstances, as parties in civil cases.

SEC. 139. Disobedience to any such subpœna shall be punished in the same manner and upon like proceedings as provided by law in civil cases, and every delinquent witness shall be liable to the party at whose instance he was summoned, in the same manner and to the same extent as in cases of witnesses summoned in a civil suit.

SEC. 140. It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the Territory, or on the part of the defendant, but such witness shall be bound to attend, and be liable for his non-attendance, in the same manner as if the fees allowed witnesses had been duly paid to him.

SEC. 141. When any issue of fact is joined to any criminal case, if any material witness for the defendant resides out of the Territory, enceinte, sick, or infirm, or is bound on a voyage, or is about to leave the Territory, such defendant may apply to the court in which the cause is pending for leave to take the deposition of such witness, and the court may grant the same in its discretion. Such deposition, if taken, shall be taken according to the rules prescribed for taking depositions in civil cases.

SEC. 142. Such leave shall not be granted unless the defendant shall consent that the deposition of any material witness on the part of the Territory may be taken, whose personal attendance cannot be obtained for similar causes.

SEC. 143. The depositions shall be taken and returned in the same manner prescribed by law in civil cases; and such depositions shall be read in like cases and with like effect and subject to the same rules as in civil cases.

SEC. 144. The defendant in any criminal cause may take the depositions of any witnesses, conditionally in the same manner as depositions are taken in civil cases, and upon like notice to the attorney prosecuting, with like effect, and in all respects, as is provided by law in civil cases.

SEC. 145. Any defendant in any indictment or information may be awarded a change of venue upon a petition, setting forth that he has reason to fear that he will not receive a fair trial in the court in which such indictment or information may be pending, on

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account that the judge is interested or prejudiced, or is of kin to, or shall have been counsel for either party, or that the prosecutor has an undue influence over the minds of the inhabitants of the county where the indictment or information shall be pending, or that the inhabitants of the county are prejudiced against the applicant so that he cannot expect a fair trial, such party may apply to the court in term time, or to the judge in vacation, by petition, setting forth the cause of the application, and praying a change of venue; and such judge or court, being satisfied that such cause exists, the facts stated in such petition being verified by the oath of the applicant, or some credible person, and reasonable notice having been given to the district attorney, may award a change of venue, to some county where the causes complained of do not exist. And in all such cases, where the judge is interested or of kin, or shall have been of counsel in the case, the court may, in term time, award a change of venue in its discretion: *Provided*, That there shall be but one change of venue allowed.

SEC. 146. If the applicant is in custody, or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant to the jail of the county, if there be a jail in such county, to which the change of venue shall have been made, and there deliver him to the keeper of such jail, together with the warrant by virtue of which he is confined or held in custody, at least three days next before the first day of the term of said court. The sheriff shall deliver such warrant, with the body of such prisoner, to the jailor of the proper county, who shall receive the same, and give the sheriff a receipt therefor, and shall take and keep the prisoner, in the same manner as if he had been originally committed to his custody. No change of venue shall be allowed until after indictment is found.

SEC. 147. Changes of venue shall not be granted after the first term at which the party applying for the same might have been heard, unless the cause shall have arisen subsequent to such term.

SEC. 148. When a change of venue shall be granted, in the term or vacation, the judge shall immediately transmit to the clerk of the court wherein such indictment is pending the petition and affidavit, together with an order in writing, directing the change of venue; and such clerk shall file the same in his office, and make a

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copy thereof, and a full transcript of the record and proceedings in such cause, together with a copy of the indictment, and all papers filed in the cause, and making a part of the record and the recognizance of the party, and all witnesses; and the clerk of the court to which such cause shall be changed, shall file the same, and the cause shall be docketed, and all proceedings had as if the cause had originated in said court. When the venue in any cause shall be changed, as aforesaid, the parties and witnesses who have entered into recognizance, are hereby repuired, on notice of such change, to attend at the time and place of trial, to be had according to such change, and on failure so to do, shall work a forfeiture of the recognizance.

SEC. 149. When a change of venue is granted, and a conviction shall be had, and imprisonment shall be part of the judgment, the sheriff shall convey the prisoner at once to the county where the crime shall have been committed, and retain him in custody according to the judgment of the court. The costs and charges shall be paid by the county in which the crime was committed, if the defendant be unable to pay them.

SEC. 150. All questions concerning the regularity of proceedings, and the rights of the court to which the change is made to try the cause and execute the judgment, shall be considered as waived after trial and verdict.

SEC. 151. When the order of removal is made in term time, it shall be deemed a notice to every person who shall have entered into recognizance to appear at such term. In other cases, the notice shall be in writing, signed by the attorney prosecuting or clerk of the court, and served on the person so recognized in the same manner as a subpœna is served.

SEC. 152. If any clerk of the district court shall neglect or refuse to perform any duty in relation to the removal of a cause, enjoined on him by the foregoing provisions, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by an action in the name of and for the use of the Territory.

SEC. 153. When there are several defendants in any indictment, in a criminal prosecution, and the cause of the removal thereof exists only as to part of them, the other defendants shall be tried, and all proceedings had against them in the county in

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which the cause is pending shall be in all respects as if no order of removal had been made as to any defendant.

TRIALS AND INCIDENTS THERETO.

SEC. 154. The defendant, and the attorney prosecuting, with the assent of the court, may submit the trial to the court, except in capital cases. All other trials must be by a jury, to be selected, summoned, and returned, as prescribed by law.

SEC. 155. No alien shall be entitled to a jury of part aliens or strangers for the trial of any indictment; but in every case the jurors shall be such only as are qualified to serve according to the laws of this Territory.

SEC. 156. The defendant in every indictment for a criminal offence shall be entitled to a peremptory challenge of jurors in the following cases, and to the numbers as follows: First, If the offence charged be punishable with death, or by imprisonment not less than for life, challenges to the number of ten, and no more. Second, If the offence be punishable with like imprisonment, not less than a specified number of years, and no limit to the duration of such imprisonment is declared, to the number of eight, and no more. Third, In any other case punishable with imprisonment in the penitentiary, to the number of six, and no more. Fourth, In cases not punishable with death, or imprisonment in the penitentiary, to the number of four, and no more.

SEC. 157. In all criminal trials the Territory may challenge half the number of jurors allowed the defendant by the preceding section.

SEC. 158. If the offence charged be punishable with death, any person entertaining such conscientious opinions as would preclude his finding the defendant guilty shall not serve as a juror.

SEC. 159. No person who believes that the punishment fixed by law to be too severe for the offence, or entertains any opinion that would preclude his finding the defendant guilty, shall be sworn as a juror.

SEC. 160. When any indictment alleges the offence against the person or property of another, neither the injured party, nor any person of kin to him, shall be a competent juror on the trial of

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such indictment; nor shall any person of kin to the prosecutor or defendant in any case serve as a juror on the trial thereof.

SEC. 161. No person who was a member of the grand jury or inquest by which any indictment or presentment was found in any cause serve as a petit juror on the trial of such cause.

SEC. 162. No witness in any criminal case shall be sworn as a juror therein if challenged for that cause before he is sworn; and if any juror shall know anything relative to the matter in issue he shall disclose the same in open court.

SEC. 163. It shall be good cause of challenge to a juror that he has formed or delivered an opinion on the issue, or any material fact to be tried; but if it appear that such opinion is founded only on rumor, and is not such as to prejudice or bias the mind of the juror, he may be sworn.

SEC. 164. All challenges for cause shall be tried by the court, on the oath of the person challenged, or other evidence, and such challenges shall be made before the juror is sworn; but if the cause of challenge be discovered after the juror is sworn, and before any part of the evidence is delivered, he may be discharged or not in the discretion of the court.

SEC. 165. No person indicted for a felony can be tried unless he be personally present during the trial; nor can any person indicted for any other offence be tried unless he be present, or some responsible person shall have executed an undertaking to pay any fine and the costs that may be adjudged against the defendant in such action. Every person indicted shall be admitted to make lawful proof, by competent witnesses, or other testimony in his defence.

SEC. 166. The proceedings prescribed by law in civil cases, in respect to the impanelling of jurors, the keeping of them together, and the manner of rendering their verdict, shall be had upon trials of indictments, and prosecutions for criminal offences, except in cases otherwise provided by statute.

SEC. 167. The provisions of law in civil cases relative to compelling the testimony and attendance of witnesses, their examination on oaths and affirmations, and proceedings for contempt, to enforce the remedies and protect the rights of parties, shall extend to criminal cases so far as they are in their nature applicable thereto, subject to the provisions contained in any statute.

SEC. 168. Verdicts may be set aside, and new trials awarded,

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on the application of the defendant, and continuances may be granted to either party in criminal cases, for like causes, and under like circumstances, except as to costs, as in civil cases.

SEC. 169 In trials for treason no evidence shall be given of any overt act that is not expressly laid in the indictment, and no conviction shall be had upon any indictment for such offence unless one or more overt acts be expressly alleged therein.

SEC. 170. In trials for conspiracy in those cases where the overt act is required by law to consummate the offence, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, and proved on the trial; but other overt acts, not alleged in the indictment, may be given in evidence on the part of the prosecution.

SEC. 171. Proof of actual penetration into the body shall be sufficient to sustain an indictment for rape, or for crime against nature.

SEC. 172. If in trial or proceeding in a criminal case the existence, constitution, or powers of any corporation shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the State government, or country by which such corporation was created.

SEC. 173. No person shall be rendered incompetent to testify in criminal causes by reason of his being the person injured or defrauded, or intended to be injured or defrauded, or that would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution; but no defendant shall testify on his own behalf.

SEC. 174. Persons of skill, or experts, may be called to testify as to the genuineness of a note, bill, draft, certificate of deposit, or other writing; but three witnesses at least shall be required to prove the fact, except in case of a larceny thereof.

SEC. 175. Any person called as a witness to testify against another for gaming is a competent witness to prove the offence, although he may have been concerned as a party, and shall be compelled to testify as other witnesses; but he shall not be liable to indictment or punishment in any such case.

SEC. 176. When two or more defendants are jointly indicted for any felony, any one defendant requiring it, shall be tried sep-

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arately; in other cases, defendants jointly indicted shall be tried jointly or separately, in the discretion of the court.

SEC. 177. On the trial of any indictment or prosecution for a criminal offence, exceptions to the decisions of the court may be made in the same cases and manner as provided by law in civil cases, and bills of exceptions shall be settled, signed, sealed, and filed, as allowed by law in civil actions.

SEC. 178. If any person indicted for any offence, and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offence, which shall be held after the indictment is found, he shall be entitled to be discharged so far as it relates to the offence for which he was committed, unless the delay shall be granted on the application of the prisoner, or shall be occasioned by the want of time to try the cause at such second term.

SEC. 179. If any person indicted for any offence, and held to answer on bail, shall not be brought to trial before the end of the third term of the court in which the cause is pending, which shall be held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offence, unless the delay be granted on his application, or be occasioned by the want of time to try such cause at such third term.

SEC. 180. If when application is made for the discharge of a defendant, under either of the last two sections, the court shall be satisfied there is material evidence on the part of the Territory which cannot then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued to the next term, and the person remanded or admitted to bail, as the case may require.

SEC. 181. If a defendant be indicted by a wrong name, unless he disclose his true name before pleading, he shall be tried by the name stated.

SEC. 182. If he alleges that another name is his true name, it must be entered in the minutes of the court, and the subsequent proceedings on the indictment shall be had against him by that name, referring also to the name by which he is indicted.

SEC. 183. The court may quash an indictment, on motion, when it appears on its face, either, First, That the grand jury had

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no legal authority to inquire into the offence charged. Second, That the facts stated do not constitute a public offence. Third, That the indictment contains any matter which, if true, would constitute a legal justification of the offence charged, or other legal bar to the prosecution.

SEC. 184. No indictment shall be *nolle prosequied* except by order of the court, on motion.

SEC. 185. The jury being impanelled and sworn, the trial shall proceed in the following order: First, The attorney prosecuting must state the case, and offer the evidence in support of the prosecution. Second, The defendant or his counsel may then state his defence, and offer evidence in support thereof. Third, The parties may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case. Fourth, When the evidence is concluded, unless the case is submitted without argument, the counsel for the Territory shall make the opening argument, the counsel for the defendant or defendants shall follow, and the counsel for the Territory shall conclude the argument. Fifth, The court shall then charge the jury, in writing, and give such instructions as may be asked by the parties, or he may in his discretion refuse to give the same, or may modify the same. When an instruction shall be given, the court shall write upon the margin thereof "given." When such instruction shall be refused, the court in a similar manner shall write the word "refused." All modifications of instructions shall be in writing. No refused instruction shall be read in the hearing of the jury, nor shall the court in any case make any oral comments to the jury on the instructions unless by agreement of both parties. All instructions given and refused shall be filed among the papers of the cause.

SEC. 186. When there is reasonable doubt whether his guilt is shown he must be acquitted. When there is reasonable doubt in which of two or more degrees of the offence he is guilty, he may be convicted of the lowest degree only.

SEC. 187. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defence, direct any defendant to be discharged, that he may be a witness for the Territory. A defendant may also, when there is not sufficient evidence to put him on his defence, at any time

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before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a co-defendant. The order of discharge shall be a bar to any other prosecution for the same offence.

SEC. 188. When it appears at any time before verdict or judgment, that a mistake has been made in charging the proper offence, the defendant shall not be discharged if there appears good cause to detain him in custody; but the court shall commit him or recognize him to answer to the offence, and if necessary, recognize the witnesses to appear and testify.

SEC. 189. When it appears, at any time before judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment to be corrected, and direct that all the papers and proceedings be certified and transferred to the proper court of the proper county, and recognize the defendant and witnesses to appear at such court on the first day of the next term thereafter, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced.

SEC. 190. When a jury has been empanelled in either case, contemplated in the last two preceding sections, such jury may be discharged without prejudice to the prosecution.

SEC. 191. When the defendant has been convicted or acquitted upon an indictment for an offence, consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offence charged in the former or for any lower degree of that offence, or for an offence necessarily included therein.

SEC. 192. If a juror has personal knowledge of any fact material to the cause, he must declare it to the court, and not to his fellow jurors out of court; if a juror declare a fact material to the cause to his fellow jurors, without the knowledge of the court and defendant, he may be punished as for a contempt.

SEC. 193. When the jurors are permitted to separate after being impanelled, and at each adjournment, they must be admonished by the court, that it is their duty not to converse among themselves, nor suffer others to converse with them, on any subject connected with the trial, or to form or express an opinion thereon, until the cause is finally submitted to them.

SEC. 194. After hearing the charge, the jury may either decide in court, or retire for deliberation. They must retire under charge of an officer, sworn to keep them together, in some private and con-

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venient place, without food, except such as the court shall order, and not permit any person to speak or communicate with them, nor do so himself, unless by order of the court, or to ask them whether they have agreed upon their verdict, and return them into court when they have so agreed, or when ordered by the court. The officer shall not communicate to any person the state of their deliberations.

VERDICT, JUDGMENT, AND PROCEEDINGS THEREON.

SEC. 195. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all appear, their verdict must be rendered in open court. If all do not appear, the rest must be discharged without giving a verdict, and the cause must be tried again at the same or next term.

SEC. 196. Upon the trial of any indictment for any offence, when by law there may be conviction of different degrees of such offence, the jury, if they convict the defendant, shall specify in their verdict, of what degree of the offence they find the defendant guilty.

SEC. 197. When the indictment charges an offence against the property of another, by robbery, theft, fraud, embezzlement, or the like, the jury, on conviction, shall ascertain and declare in their verdict, the value of the property taken, embezzled, or received, and the amount restored, if any, and the value thereof; but their failure to do so, shall in nowise affect the validity of their verdict.

SEC. 198. In all cases of a verdict of conviction for any offence, when by law there is any alternative or discretion in regard to the kind or extent of punishment to be inflicted, the jury may assess and declare the punishment in their verdict; and the court shall render a judgment according to such verdict, except as hereinafter provided.

SEC. 199. When a jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, or assess a punishment not authorized by law, and in all cases of judgment by confession, the court shall assess and declare the punishment, and render judgment accordingly.

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SEC. 200. If the jury assess a punishment, whether of imprisonment or fine, below the limit prescribed by law, for the offence of which the defendant is convicted, the court shall pronounce sentence, and render judgment, according to the lowest limit prescribed by law, in such case.

SEC. 201. If the jury assess a punishment, whether of imprisonment or fine greater than the highest limit declared by law, for the offence of which they convict the defendant, the court shall disregard the excess, and pronounce sentence, and render judgment, according to the highest limit prescribed by law in the particular case.

SEC. 202. The court shall have power in all cases of conviction, to reduce the extent or duration of the punishment assessed by a jury, if, in its opinion, the conviction is proper, but the punishment assessed is greater than, under the circumstances of the case, ought to be inflicted.

SEC. 203. The court before which any person shall be convicted of any criminal offence shall have power, in addition to the sentence prescribed or authorized by law, to require such person to give security to keep the peace, or be of good behavior, or both, for a term not exceeding two years, or to stand committed until such security be given.

SEC. 204. The last section shall not extend to convictions for writing or publishing any libel, nor shall such security be hereafter required by any court, upon any complaint, prosecution, or conviction, for any such writing or publishing.

SEC. 205. No recognizance given under the provisions of the second preceding section shall be deemed to be broken unless the principal therein be convicted of some offence amounting in judgment of law to a breach of such recognizance.

SEC. 206. After verdict of guilty, or finding of the court against the defendant, if judgment be not arrested, or a new trial granted, the court must pronounce judgment.

SEC. 207. For the purpose of judgment, if the conviction be for an offence punishable by imprisonment, the defendant must be personally present; if for a fine only, he must be personally present unless an undertaking shall have been executed, as mentioned in section one hundred and sixty-five, and then judgment may be rendered in his absence.

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SEC. 208. When the defendant is convicted of any offence, if he be in custody, the court may direct the officer in whose custody he is to bring him before it for judgment.

SEC. 209. If in any case the defendant be not present, when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in the Territory, as a warrant of arrest in other cases.

SEC 210. When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him.

SEC. 211. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it shall thereupon be rendered.

SEC. 212. When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed to the jail of the county until the same be paid or replevied.

SEC 213. In all cases in which the prosecutor shall be adjudged to pay the costs, he shall be sentenced to pay the costs of the prosecution, or give security to the sheriff to pay the same in ten days, and stand committed until the sentence be complied with.

SEC. 214. Any person imprisoned for failure to pay any fine or costs, shall be discharged after being imprisoned one day for every five dollars of the fine and costs, if it appear by affidavit or other proof that such person is unable to pay the same; but execution may issue against the property of the defendant or prosecutor as on other judgments.

SEC. 215. Whenever judgment upon a conviction shall be rendered in any court, the clerk of such court shall enter such judgment fully in the minutes, stating briefly the offence for which conviction shall have been had, and the court shall inspect such entries and conform them to the facts; but the omission of this duty, either by the clerk or judge, shall in no wise affect or impair the validity of the judgment.

SEC. 216. Whenever a sentence of imprisonment in a county jail shall be pronounced upon any person, convicted of any offence, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county a transcript of the entry of such conviction and of the sentence thereupon, duly certified by such

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clerk, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly.

SEC. 217. When any criminal shall be sentenced to any punishment, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall without delay, either in person or by deputy, cause such criminal to receive the punishment to which he was sentenced.

SEC. 218. Such sheriff or deputy, while conveying the criminal to the place of punishment, shall have the same power and like authority to require the assistance of any citizen of the Territory in securing such criminal, and retaking him if he shall escape, as such sheriff or deputy has in any other case; and all persons who shall neglect or refuse to assist such sheriff or deputy when required shall be liable to the same penalties as for similar refusals in other cases.

SEC. 219. Whenever any criminal shall be sentenced to the punishment of death, the court shall cause to be made out, sealed and delivered to the sheriff of the county, a warrant, stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than four nor more than eight weeks from the time of the sentence.

SEC 220. The punishment of death prescribed by law must be inflicted by hanging by the neck, at such time as the court may adjudge.

SEC. 221 When execution of such sentence is respited to a further day by the governor, the sheriff must note the same on the warrant, and the defendant must be detained in custody until the day to which the respite is granted, at which time the sheriff, unless the judgment is revoked or the defendant is pardoned, must execute the sentence, between the hours specified in the judgment, and return the warrant with the respite.

SEC. 222. The sentence of death shall be executed in some private enclosure, as near the jail as possible. The sheriff shall invite to be present at the execution, by at least three days notice, the judge of the court, the attorney prosecuting, and the clerk of the court, together with two physicians, and twelve reputable citizens, to be selected by him. He must also, at the request of the prisoner, permit any minister of the gospel whom the prisoner

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may name, and any of his relations and friends whom he may desire, not exceeding two, to attend the execution, and also such peace officers as the sheriff may deem proper. No person other than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

SEC. 223. For good cause shown, the court in which the conviction is had, or the governor, may prolong the time or suspend the execution of any criminal sentenced to the punishment of death; and no other court or officer shall have such authority, except in the cases and in the manner hereinafter provided.

SEC. 224. If after any criminal be sentenced to the punishment of death, the sheriff shall have cause to believe that such criminal has become insane, he may summon a jury of twelve competent jurors, with the concurrence of the judge of the court by which the judgment was rendered, to inquire into such insanity, giving notice thereof to the attorney prosecuting.

SEC. 225. The attorney prosecuting shall attend such inquiry, and may produce witnesses before the jury, and may cause subpœnas to be issued by the clerk for that purpose; and disobedience thereto may be punished by the district court in the same manner as in other cases.

SEC. 226. The inquisition of the jury shall be signed by them and by the sheriff. If it be found that such criminal is insane, the sheriff shall suspend the execution of the sentence until he receive a warrant from the governor, or from the supreme or district court, as hereinafter authorized, directing the execution of the criminal.

SEC. 227. The sheriff shall immediately transmit such inquisition to the governor, who may, as soon as he shall be convinced of the sanity of such criminal, issue a warrant appointing a time and place for the execution, pursuant to his sentence, or he may in his discretion commute the punishment to imprisonment for life.

SEC. 228. If after any female criminal is sentenced to the punishment of death, the sheriff shall have reason to suspect that she is pregnant, he shall in like manner summon a jury of six persons, not less than three of whom shall be physicians, and shall give notice thereof to the attorney prosecuting, who shall attend, and the proceedings shall be had as provided in the second preceding section.

SEC. 229. The inquisition shall be signed by the jury and the

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sheriff, and if it appear that such female is quick with child, the sheriff shall in like manner suspend the execution of her sentence, and transmit the inquisition to the governor.

SEC. 230. Whenever the governor and court shall be satisfied that the cause of such suspension no longer exists, the governor shall issue his warrant, appointing a day for the execution of such criminal, pursuant to her sentence, or he may at his discretion commute her punishment to imprisonment for life.

SEC. 231. Whenever for any reason any criminal sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the supreme court, or the district court of the county in which the conviction was had, on the application of the attorney prosecuting, shall issue a writ of *habeas corpus* to bring such criminal before such court; or if he be at large, a warrant for his apprehension may be issued by such court, or any judge thereof.

SEC. 232. Upon such criminal being brought before the court, they shall proceed to inquire into the facts, and, if no legal reason exist against the execution of such sentence, such court shall issue a warrant to the sheriff of the proper county, commanding him to do execution of the sentence, at such time as shall be appointed therein; which shall be obeyed by the sheriff accordingly.

SEC. 233. It shall be the duty of the clerk of the district court, at the end of each term, to issue executions for all fines imposed, and the costs of convictions in criminal cases during the term and remaining unpaid, which shall be executed in the same manner, as executions in civil cases, and the property of the defendant and his bail, may be seized and sold thereon, notwithstanding the defendant may be in custody for the same demand.

NEW TRIALS, AND ARREST OF JUDGMENT.

SEC. 234. A new trial, is a re-examination of the issue, in the same court.

SEC. 235. The granting of a new trial, places the parties in the same position as if no trial had been had. The former verdict cannot be used, or referred to, either in the evidence or argument.

SEC. 236. The court may grant a new trial, for the following

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causes, or any of them: First, When the jury has received any evidence, papers or documents not authorized by the court, or the court has admitted illegal testimony, or for newly-discovered evidence. Second, When the jury has been separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case. Third, When the verdict has been decided by means, other than a fair expression of opinion on the part of all the jurors. Fourth, When the court has misdirected the jury, in a material matter of law. Fifth, When the verdict is contrary to law or evidence: but no more than two new trials shall be granted, for this cause alone.

SEC. 237. The application for a new trial must be made before judgment.

SEC. 238 A motion in arrest of judgment, is an application on the part of the defendant, that no judgment be rendered on a verdict of guilty, or finding of the court; and may be granted by the court, for either of the following causes: First, That the grand jury who found the indictment, had no legal authority to inquire into the offence charged, by reason of it not being within the jurisdiction of the court. Second, That the facts stated, do not constitute a public offence

SEC. 239. The court may also, in its view of any of these defects, arrest the judgment without motion.

SEC. 240. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found, except in cases otherwise provided for.

SEC. 241. When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offence if properly indicted, the court may order the defendant to be recommitted, or admitted to bail, anew, to answer a new indictment

OF APPEAL.

SEC. 242. An appeal to the supreme court may be taken by the defendant, as a matter of right, from any judgment against him, and upon appeal, any decision of the court or intermediate order, made in the progress of the case, may be reviewed.

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SEC. 243. An appeal from a judgment, in a criminal action, may be taken in the manner and in the cases prescribed in this chapter.

SEC. 244. Appeal to the supreme court may be taken by the Territory, in the following cases, and no other: First, Upon a judgment for the defendant in quashing or setting aside an indictment. Second, Upon an order of the court, arresting the judgment. Third, Upon a question of law, reserved by the Territory.

SEC. 245. The appeal must be taken, within six months after the judgment is rendered, and the transcript must be filed, within thirty days after the appeal is taken.

SEC. 246. An appeal is taken by the service of a notice upon the clerk of the court where the judgment was entered, stating that the appellant appeals from the judgment. If taken by the defendant, a similar notice must be served upon the attorney prosecuting. If taken by the Territory, a similar notice must be served upon the defendant, if he can be found in the county, if not found, by posting up a notice three weeks, in the clerk's office.

SEC. 247. An appeal taken by the Territory in no case stays or affects the operation of the judgment in favor of the defendant, until the judgment is reversed.

SEC. 248. An appeal taken to the supreme court, from a judgment of conviction, does not stay the execution, except, when the judgment is for a fine, or fine and costs, only, in which case the execution may be stayed, by an order of the supreme court, or a judge thereof.

SEC. 249. In case of an appeal from a question reserved, on the part of the Territory, it is not necessary for the clerk of the court below, to certify in the transcript, any part of the proceedings and records, except, the bill of exceptions, and the judgment of acquittal When the question reserved is defectively stated, the supreme court may direct any other part of the proceedings and record to be certified to them.

SEC. 250. An appeal shall stand for trial immediately after filing the transcript, if the supreme court is in session; if not in session, at the next term thereafter, on proof of notice of appeal to the appellee.

SEC. 251. When several defendants are tried jointly, any one

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or more of them may take an appeal; but those who do not join in the appeal, shall not be affected thereby.

SEC. 252. The appellate court may reverse, affirm or modify the judgment appealed from, and may, if necessary or proper, order a new trial. In either case, the cause must be remanded to the court below, with proper instructions, and the opinion of the court, within the time, and in the manner, to be prescribed by rule of court.

SEC. 253. When a judgment against the defendant is reversed, and it appears that no offence whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offence, although defectively charged in the indictment, the supreme court must direct the prisoner to be returned, and delivered over to the jailor of the proper county, there to abide the order of the court in which he was convicted

SEC. 254. On an appeal, the court must give judgment, without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

SEC. 255. An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected within a reasonable time after an appeal has been dismissed, another appeal may be taken.

SEC. 256. On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court shall direct.

SEC. 257. All opinions of the supreme court in criminal prosecutions, must be given in writing, and recorded in the order book.

COSTS IN CRIMINAL CASES.

SEC. 258 The costs shall be paid by the county in which the offence is committed, in which the defendant shall be convicted, and shall be unable to pay them.

SEC. 259. In all cases in which the defendant is acquitted, the costs shall be paid by the county, unless the prosecutor be adjudged to pay them.

SEC. 260. In all cases except a felony, when the indictment

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shall be returned "not a true bill," the prosecutor shall be adjudged to pay the costs, unless the grand jury shall determine that the county, and not the prosecutor, shall pay the same. The opinion of a majority of the grand jury, certified by their foreman, stating who shall be liable for costs, shall be conclusive in the court rendering judgment in the same.

SEC. 261. If any person charged with an offence less than a felony, shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor, or person on whose oath or information the same shall have been instituted, unless the officer shall certify that there was probable cause for the prosecution, in which event, they shall be paid by the county in which the offence was committed. When the prosecutor is condemned to pay the costs, the officer taking the examination shall issue execution for them forthwith, if demanded. When the bill of costs shall be certified to the tribunal transacting county business, for payment, the same shall be strictly examined by the tribunal, and no allowance shall be made, but for such services as are expressly compensated by law.

SEC. 262. If a person charged with a felony shall be discharged, by the officer taking his examination, or if recognized or committed for any such offence, and no indictment be preferred against him, the costs shall be paid by the county, which shall be certified for allowance, in the manner hereinafter declared.

SEC. 263. If upon the trial of an indictment whereon the name of the prosecutor is indorsed as such, according to law, the jury shall acquit the defendant, they shall determine and return, together with their verdict, whether the prosecutor or the county shall pay the costs, and the court shall render judgment accordingly.

SEC. 264. In all cases, not herein otherwise provided for, the costs shall be paid by the county in which the offence was committed.

SEC. 265. Whenever any person shall be convicted of any crime or misdemeanor, no costs incurred on his part, except fees for board, shall be paid by the county or Territory, except as herein otherwise provided.

SEC. 266. No subpœna for a witness in any criminal case, shall be issued, unless the name of such witness is indorsed on the indictment, or the attorney prosecuting, or the prosecutor in the cause,

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or the defendant or his attorney, shall order the same; and no subpœna shall be issued for any witness, unless the accused is in custody, or on trial, or unless the clerk shall be satisfied that he will be in attendance on the court, at the return term of the process; and all costs unnecessarily incurred by a violation of this section shall be taxed against the clerk.

SEC. 267. Whenever a witness in a criminal case is once recognized or subpœnaed, he shall attend under the same until he is discharged by the court; and no costs shall be allowed for any subsequent recognizance or subpœna against the same witness.

SEC. 268. Whenever the tribunal transacting county business of any county of which the offender shall have committed any crime, for which he is imprisoned, may be satisfied of the necessity of so doing, may make an allowance for ironing the prisoner, and may allow a moderate compensation for medical services, fuel, bedding, and menial attendance, for any prisoner, which shall be paid out of the county treasury.

SEC 269. All fines and penalties imposed, and all forfeitures incurred in any county, shall be paid into the treasury therof, for the benefit of said county.

SEC. 270. The clerks of the several courts in the Territory in which any criminal cause shall have been determined or continued generally, and in which the Territory or county shall be liable for costs, shall, before the next succeeding term, tax all costs which shall have accrued in the same, and make out and deliver to the attorney prosecuting in said court, within the time aforesaid, a complete fee bill, specifying each item of service, and the fee therefor; and if any clerk fail to perform the duties hereby enjoined on him, any person injured by such neglect, may, by motion in said court, giving two days' notice thereof to such clerk or his deputy, recover against the clerk, treble the amount of costs to which he is entitled in the cause, in which the clerk shall have failed to make out and deliver to the prosecuting attorney a fee bill.

SEC. 271. It shall be the duty of the judge and attorney prosecuting of every court in this Territory, having criminal jurisdiction, to meet together in term time, and examine strictly each bill of costs which shall have been delivered to the attorney prosecuting of said court for allowance against the county or Territory, and ascertain, as far as practicable, whether the services have been rendered

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for which charges are made, and whether compensation is expressly given by law, for the services charged, or whether greater charges are made, than the law authorizes, and if they find that the said fee bill has been made out in conformity to law, and if not, after correcting all errors therein, they shall certify to the clerk of the tribunal transacting county business, the amount of costs due by the county on said fee bill, which shall be delivered to the clerk to be collected without delay, and paid over to those entitled to the fees allowed; and any clerk failing to collect said fees, or having collected them shall refuse to pay the same on demand, shall be subject to the penalties prescribed in the preceding section, to be recovered in like manner.

SEC. 272. The original fee bill signed by the judge and attorney prosecuting, a copy of which shall be certified to the tribunal transacting county business, shall be carefully preserved by the clerk, in his office, and shall be evidence of the facts therein contained, without further proof.

SEC. 273. The judge and the attorney prosecuting shall be careful, and not tax the county with more than the costs of three witnesses, to establish one fact.

MISCELLANEOUS PROVISIONS.

SEC. 274. Upon complaint being made on oath, to any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen or embezzled, and that the complainant has reason to believe that such property is concealed in any particular house or place, if such magistrate shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.

SEC. 275. Such warrant shall be directed to the sheriff of the county, and shall command him to search the place where such property is suspected to be concealed, in the day time, which place shall be designated, and the property particularly described in such warrant, and to bring such property before the magistrate issuing the warrant.

SEC. 276. If there be positive proof that any property stolen or embezzled is concealed in any particular place or house, the war-

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rant may order the searching of such place or house.

SEC. 277. Every such warrant shall be executed by a public officer, and not by any other person.

SEC. 278. Any magistrate who shall commit any person charged with an offence, to jail, or by whom any vagrant or disorderly person may be committed, may cause such person to be searched for the purpose of discovering any money or property he may have, and if any be found, the same may be taken and applied to the support of such person while in confinement.

SEC. 279. When property alleged to have been stolen shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officer, he shall hold the same, subject to the order of the officer authorized to direct the disposition thereof.

SEC. 280. Upon receiving satisfactory proof of the title of any owner of such property, the magistrate who shall take the examination of the person accused of any of the offences referred to in the preceding section, may order the same to be delivered to such owner, on his paying the reasonable and necessary expenses, incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

SEC. 281. If such property come into the custody of any magistrate, upon satisfactory proof of the title of any owner thereof, it shall be delivered to him on the payment of the necessary expenses incurred in the preservation thereof, to be certified by such magistrate.

SEC. 282. If such property shall not have been delivered to the owner thereof, the court before which a conviction shall be had for the stealing, embezzling or obtaining such property, may, upon proof of the ownership of any person, order the same to be restored to him, on the payment of the expenses incurred in the preservation thereof.

SEC. 283. If such property shall not be claimed by the owner within six months from the time any person shall have been convicted of obtaining it in any of the modes referred to in this act, the court, or magistrate authorized by the preceding provisions to order a restoration, may order the same to be sold; and the proceeds of the sale, after payment of the expense of preservation

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and sale of the property, shall be paid into the county treasury, for the use of the county.

SEC. 284. If the property thus obtained be a living animal, or be of a perishable nature, the court or magistrate authorized to order a restoration may order a sale thereof; and the proceeds shall be applied in the same manner as hereinbefore directed, in respect to such property.

SEC. 285. In case of sale, as specified in the last section, a particular description of the property shall be made out in writing, and filed with the court or officer making the order of sale, so that the owner may identify the same, if he shall claim the proceeds within the time limited by law for making his claim.

SEC. 286. Warrants authorized by law to be issued in criminal cases, may be under the hand of the magistrate issuing the same, and shall be as valid and effectual in all respects, as if sealed.

SEC. 287. All recognizances required or authorized to be taken in any criminal proceedings in open court by any court of record, shall be entered on the minutes of such court, and the substance thereof shall be read to the person recognized; all other recognizances in any criminal matter or proceeding, or in any proceeding of a similar nature, shall be in writing, and subscribed by the parties to be bound thereby.

SEC. 288. Every officer, or other person, who shall have arrested, or have in his custody, under authority of the laws of this Territory, any prisoner who is to be conveyed from one county to another, may take such prisoner through such parts of any county as shall be in the ordinary route of travel from the place where such prisoner shall have have been arrested to the place where he is to be conveyed and delivered under the process or authority by which such prisoner shall have been arrested or detained.

SEC. 289. The officer or person having such prisoner in charge shall not be liable to arrest in civil process while on his route; and he shall have the like power to require any person to aid in securing such prisoner, and retaking him if he escapes, as sheriffs or other officers have in their own county; and a refusal or neglect to render such aid shall be an offence punishable in the same manner as for disobedience to a summons to assist in the execution of a process.

SEC. 290. The jailor of every county through which such pris-

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oner may be taken is required to receive and safely keep such prisoner in the jail of which he has charge, when requested by the officer or person having lawful charge of such prisoner, and redeliver him on demand of such officer or person.

SEC. 291. Whenever the governor of this Territory shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the Territory, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offence was committed, or is by law cognizable.

SEC. 292. The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed, and paid out of the Territorial treasury, as other demands against the Territory.

SEC. 293. Whenever in the opinion of the court it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the officer and a person appointed to show them the place shall speak to them on any subject connected with the trial.

SEC. 294. To make an arrest in criminal actions, the officer may break open any outer or inner door or window of a dwelling-house, or other building, or any other inclosure, if, after notice of his office and purpose, he be refused admittance.

SEC. 295. When the sheriff or other officer is guilty of corruption in selecting or empanelling a grand or traverse jury, it is good cause of challenge to any of the jurors so selected or empanelled.

SEC. 296. Every judgment, commitment, and process of the district court, must be executed by the sheriff.

SEC. 297. When any criminal in the Territorial prison is ordered to be returned to the county where he was convicted to await a new trial, the keeper of the Territorial prison must execute the order. The keeper is entitled to such fees therefor as are allowed to the sheriff for taking the convict to the Territorial prison.

SEC. 298. When the term "person," or other word is used to

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designate the party whose property is the subject of an offence, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this Terrritory, or any other state or territory, or any public or private corporation, as well as an individual.

SEC. 299. All the definitions of terms in the act preceding the rules of pleading and practice in civil actions, are adopted in this act so far as they are applicable.

SEC. 300. If money has been deposited instead of bail, and the defendant at any time before the forfeiture thereof shall give sufficient special bail, or shall surrender himself in open court, or to the sheriff, as provided in this act, or be in any manner legally discharged, the clerk shall return the deposit.

SEC. 301. If any person charged with, or convicted of, a felony, shall break prison, escape or flee from justice, and abscond or secrete himself, the governor of the Territory may, if he deems it expedient, offer any reward, not exceeding one thousand dollars, for the apprehension and delivery of such person to the custody of such sheriff or other officer as he may direct.

SEC. 302. When any person shall apprehend and deliver such fugitive to the proper sheriff or officer, he shall take his certificate of such delivery, and the governor, on the production of such certificate, shall certify the amount of the claim to the auditor of public accounts.

SEC. 303. In all cases in which the governor is authorized by law to grant pardons, he may grant the same on such conditions, and under such restrictions, as he may think proper.

SEC. 304. When any indictment or prosecution shall be quashed, set aside, or reversed, the time during which the same was pending shall not be computed as part of the time of the limitation prescribed for the offence.

SEC. 305. In all cases when a person shall be arrested for any criminal offence, his real estate and mining claims shall be liable for the payment of any judgment imposing any fine or costs upon such person, and such judgment shall be a lien on such real estate or mining claims from the time of such arrest.

SEC. 306. The real estate and mining claims of all persons who sign or enter into any recognizance for the appearance of any person charged with any criminal offence shall, if such recognizance be

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forfeited, be liable for the payment of any judgment which may be recovered thereon, and such judgment is hereby declared to be a lien upon such property from the date of such recognizance. Nothing in either of the above sections shall be construed so as to prohibit the issuing of execution and the enforcing the collection thereof out of any other property of the defendants than above enumerated.

CHAPTER II.

Proceedings in Justices' Courts.

Sec 307. Justices of the peace shall have jurisdiction within their respective counties to hear and determine all criminal actions when the punishment for the offence charged is by fine only, or fine and imprisonment in the county jail, not exceeding six months, and shall be authorized to assess a fine in any amount not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

Sec. 308. If the justice or jury trying any such case shall be of the opinion that the punishment which a justice is authorized to inflict is not adequate to the offence committed, they shall so find, whereupon the justice shall recognize the defendant and the witnesses to appear in the district court, in the same manner as peace magistrates are authorized to recognize persons and witnesses for offences committed; and the same proceedings shall be had in such cases in the district court as if the examination had not been had before such a magistrate.

Sec. 309. Whenever an affidavit shall be filed with a justice of the peace, in writing, charging any one with an offence of which such justice shall have jurisdiction, the justice shall forthwith issue a warrant for the arrest of the offender, which warrant shall be executed by the sheriff of the county, or any constable thereof, or by some competent person specially deputed by the justice for that purpose, which authority shall be endorsed on the warrant.

Sec. 310. If any such offence is committed in the presence of the justice or peace officer, he shall immediately arrest the offender, or cause it to be done, and for the purpose no warrant or process shall be necessary; but such offender shall not be detained longer

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than twenty-four hours unless there be an affidavit filed charging such person with some offence, and in that case the same shall be disposed of as other cases.

SEC. 311. When any person shall be brought before a justice of the peace, under the provisions of this chapter, it shall be the duty of the justice to proceed to hear and determine the same, as herein provided.

SEC. 312. Upon good cause shown by either party, the justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into a recognizance, with sufficient security, conditioned that he will appear before the justice at the time and place appointed, then and there to answer the charge alleged against him.

SEC 313. If the defendant fail or refuse to enter into a recognizance, the justice shall commit him to the jail of the county, there to remain until the day fixed for trial unless recognizance be given in the meantime.

SEC. 314. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the district court, to be proceeded on as recognizances certified to such court by magistrates.

SEC. 315. If in the progress of any trial before a justice of the peace, under the provisions of this chapter, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before a justice of the peace, the justice shall immediately stop all further proceedings before him, and proceed as a magistrate in cases cognizable only in the district court.

SEC. 316. In all cases arising under this act, it shall be the duty of the justice to summon the injured party, and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary.

SEC. 317. The defendant shall be entitled, if demanded by him, to jury trial The jury shall consist of six persons of the requisite qualifications of jurors in civil cases before justices of the peace, and shall be summoned in the same manner.

SEC. 318. The jury shall be empanelled and sworn in the same manner as in civil cases before a justice of the peace, and each party shall be entitled to challenge peremptorily one-half the number of the jury.

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SEC. 319. When proceedings are commenced under the provisions of this chapter, on the information or complaint of the injured party, his name shall be entered by the justice on his docket as prosecutor; and if the defendant shall be discharged or acquitted, the costs shall be paid by the county, unless the justice or jury trying the case shall find that there was no probable cause for the commencement of the same, in which case the prosecutor shall pay the costs, and judgment shall be rendered against him accordingly.

SEC. 320. The justice or jury trying the case shall, if the defendant is found guilty, assess the fine that he shall pay and the imprisonment that shall be inflicted, and judgment shall be rendered accordingly.

SEC. 321. In all cases of conviction, under the provisions of this chapter, the justice shall enter his judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, as in cases in the district court.

SEC. 322. Any defendant committed under the provisions of this chapter may be discharged in the same manner as if he had been committed by the district court.

SEC. 323. Any person convicted under the provisions of this chapter, may appeal to the district court, at any time within ten days after judgment is rendered, by entering into recognizance with sufficient security, conditioned that he will appear in the district court on the trial therein, and pay all judgments for fine and costs that may be rendered against him in the district court in such case: *Provided*, Said defendant give notice of his intention so to do, at the time of the rendition of judgment.

SEC. 324. When an appeal is taken, the justice shall immediately make a certified transcript of all his proceedings therein, and transmit the same, together with the papers in said cause, to the clerk of the district court.

SEC. 325. When an appeal is taken according to this chapter, on the day of trial the justice shall recognize all material witnesses for their appearance at the district court on the trial of such cause.

SEC. 326. The clerk of the district court shall enter the same on the court docket, in its order with other criminal causes; and the same shall be heard at the next term thereafter, unless, for good cause, the same be continued.

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SEC. 327. The costs in both cases shall abide the event of the trial in the district court.

SEC. 328. If the judgment of the justice shall be affirmed or modified, or if upon trial in the district court, the defendant shall be convicted and any fine assessed, judgment shall be rendered for such fine and costs, in both courts, against the defendant and his securities.

SEC. 329. All such cases shall be tried anew, in the district court.

SEC. 330. If the judgment in the district court be not paid, execution may issue thereon against the defendant and his securities for the fine and costs aforesaid, which shall be made out of the property of the defendant, if sufficient thereof be found, if not, then out of the property of his securities.

SEC. 331. The justice shall issue executions for all fines and costs that are not paid in any case before him, which shall be issued, executed and returned, in the same manner as executions issued by justices of the peace in civil cases. If the county shall have paid the costs in any case, and such costs shall afterwards be collected from the defendant, they shall be paid into the county treasury.

SEC. 332. In all cases not specially provided for in this chapter, the process and proceedings before a justice shall be governed by the law regulating proceedings in justices' courts in civil cases.

SEC. 333. Any justice of the peace, sheriff, constable, or coroner, who shall wilfully neglect or refuse to perform any duty enjoined on him by this chapter, shall be deemed guilty of a misdemeanor in office, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

SEC. 334. When a trial under the provisions of this chapter, shall be continued by the justice, it shall not be necessary for the justice to summon any witnesses who may be present at the continuance, but said justice shall verbally notify such witnesses as either party may require, to attend before him, to testify in the cause, on the day set for the trial, which verbal notice shall be as valid as a summons.

SEC. 335. Any officer charged with the collections of fines, under the provisions of this chapter, shall return the execution to the justice, within thirty days from its delivery to him, and pay

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over to the justice the money collected thereon, deducting his fees for collection of the same.

SEC. 336. All fines imposed and collected by any justice under the provisions of this chapter, shall be paid by him to the treasurer of the county where the conviction was had, for the use of such county, within thirty days after the receipt of the same, and the justice shall take duplicate receipts therefor, one of which he shall deposit with the county auditor, or officer performing the duties of such office.

SEC. 337. If any justice shall fail to pay over such moneys as aforesaid, it shall be the duty of the treasurer of the proper county to prosecute such delinquent justice for the recovery of the same, together with the penalty of twenty per centum thereon, in an action of debt, before any court having jurisdiction thereof.

SEC. 338. When a judgment of imprisonment is rendered by a justice, a certified copy of the same shall be delivered to the jailor, which shall be sufficient authority for executing the judgment.

SEC. 339. This act shall not affect any criminal action pending, at the time of the taking effect of the same, but such action shall be made to conform, as near as may be, to the provisions herein contained; otherwise such actions shall be carried on to their final termination, under the laws that were in force at the time of the commencement of the same.

SEC. 340. This act shall take effect and be in force, from and after its approval by the governor.

SEC. 341. An act entitled "an act to regulate the proceedings in criminal cases, in the courts of justice, in the Territory of Idaho," approved February first, 1864, and all other laws and parts of laws in conflict with this act, be, and the same are hereby repealed.

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PUBLIC LAWS.

AN ACT in relation to Executors and Administrators.

ARTICLE I.

OF THEIR APPOINTMENT AND REMOVAL FROM OFFICE.

1. Letters testamentary and of administration ; by whom granted.
2. Duty of probate judge when granted in vacation.
3. Where letters are to be granted.
4. Proceeding entrusted to court; where to be had.
5. Who shall be an executor or administrator.
6. Who entitled to administration next of kin.
7. When letters may be granted to other persons.
8. A non-resident of the Territory shall not be executor or administrator.
9. Citation may be issued to persons entitled; failure to appear deemed a renunciation.
10. Letters to administrators.
11. Executors shall give bonds.
12. Shall have two or more good securities.
13. Validity of the will.
14. Application of administration to discover on oath the heirs; administrator to take oath.
15. Administrator *de bonis non* to take similar oaths.
16. Oath of administrators, with will annexed.
17. Bond of administrators.
18. Condition of bond.
19. Bond of executors or administrators, with will annexed.
20. Who shall not be taken as security in bond of executor or administrator.
21. Who to be used as security; testimony may be taken.
22. Bonds to be recorded; originals filed; taken in vacation; how disposed of.
23. Probate court to approve or reject bond taken in vacation; duty of clerk in such cases.
24. If bond be rejected, new bond to be given; failure to give, such letters to be revoked.
25. Original bond valid until new bond given.
26. Letters of administration to be recorded before delivery.
27. Penalty on clerk for failing to record letters before delivery.
28. Certified copies of letters to be testimony.
29. Form of letters testamentary.
30. Form of letters of administration.
31. All letters to be issued in the above form.
32. Letters revoked on production of will.
33. Letters revoked; if will set aside, other letters granted.

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34. Marriage of *femme sole*.
35. For what cause, and how letters may be revoked.
36. Heir, legatee, creditor, or other persons, may apply for additional security.
37. Security in bond may apply to be released on his bond.
38. When another bond may be required.
39. New bond to discharge former securities.
40. Failure to give new bond deemed a revocation of letters.
41. Court may order further security to be given; failure to comply deemed a revocation of letters.
42. Resignation of letters; how made.
43. On resignation, expenses paid by applicant.
44. Letters of one revoked, others to proceed with administration.
45. Administrator *de bonis non*; when granted.
46. If executors or administrators die or resign, letters revoked; how to account.
47. Who may proceed against the delinquent and his securities.
48. Securities not to be sued after seven years.
49. Failure to make settlement; court may revoke letters.
50. Delinquent to pay for citation or attachment.
51. Surviving partner may administer on partnership effects; when and how.
52. Executors or administrators of member of copartnership to make inventory of property.
53. Duty of executors or administrators of deceased partner when surviving partner fails to administer.
54. Disposition of property when partner administers.
55. Condition of bond.
56. Bond may be taken by the proper court in the county in which partner resides.
57. Authority of probate over survivor.
58. Survivor refusing to act, executor or administrator of deceased member of firm to give bond and take possession of partnership effects; his duties.
59. To give further bond; its condition.
60. Survivor to exhibit, and in certain cases to surrender, partnership property.
61. Failure to comply may be cited; penalty.
62. What debts must be exhibited for allowance, and property bound for debts.
63. Time for exhibition of claims.
64. Who may defend claims against partnership; in what cases, and to what extent.
65. This act to govern administrators of partnership effects; to what extent.
66. Powers of court in case of resignation or removal of administrators.
67. Powers of court in case of death of the administrator or executor.
68. Other powers granted; court; judgment may be rendered against certain parties.
69. Notice to be given.
70. Notice to be issued, and by what officer.
71. Notice, and the manner of its service.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. The probate court in each county, or the clerk thereof in vacation, shall grant letters testamentary and of administration,

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subject to the confirmation or rejection of said probate court in term time.

SEC. 2. The clerk thereof shall present to the probate court on the first day of the next succeeding term thereof all such letters as may have been granted by him in vacation, and shall enter on the records the confirmation of such letters.

SEC. 3. Letters testamentary and of administration shall be granted in the county where the mansion-house or place of abode of the deceased is situated. If he or she had no mansion-house or place of abode, and be possessed of lands or real estate, letters shall be granted in the county in which such lands, or a part thereof, lies. If the deceased had no mansion-house or place of abode, and was not possessed of lands, letters may be granted in the county in which he died, or in the county in which the greater part of his or her estate may be. If he or she died out of this Territory, leaving no mansion-house or place of abode, or lands, in this Territory, such letters may be granted in any county.

SEC. 4. All orders, settlements, trials, and other proceedings, entrusted by this act to the probate courts, shall be had or made in the county in which letters testamentary or of administration were granted.

SEC. 5. No judge of probate in his own county, or the clerk or deputy clerk of such court, and no person under twenty-one years of age, or of unsound mind, or who has been convicted of an infamous crime, or who upon proof shall be adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding, shall be appointed or act as administrator or executor. No married woman shall be executrix or administratrix, nor shall the executor of an executor in consequence thereof be executor of the first testator.

SEC. 6. Letters of administration shall be granted first to the husband or wife of the deceased, or to those who are entitled to distribution of the estate, or one or more of them, as the court shall believe will best manage and improve the estate.

SEC. 7. If no person apply for such letters within twenty days after the decease, letters may be granted to any person whom the court, or clerk in vacation, may think most suitable, and possessing the necessary qualification to execute said trust.

SEC. 8. Letters testamentary and of administration shall in no

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case be granted to a non-resident of this Territory; and whenever an executor or administrator shall become a non-resident, the probate court having jurisdiction of the estate of the testator or intestate of such executor or administrator shall revoke his or her letters.

SEC. 9. The probate court, or the clerk thereof in vacation, on the application of any person interested, may issue a citation to the person entitled to administration, calling others to administer, and if they fail to take out letters within ten days after the service of the citation, or if the persons entitled to the preference file their renunciation thereof, in writing, letters of administration shall be granted to the person next entitled thereto.

SEC. 10. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, or be disqualified, letters shall be granted to the person to whom administration would have been granted if there had been no will.

SEC. 11. When there are two or more persons appointed executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond.

SEC. 12. When two or more persons are appointed executors, the court or judge, or clerk in vacation, may take a separate bond from each of them, with two or more good securities, or he may take a joint bond from all of them, with two or more sufficient securities

SEC. 13. If the validity of the will be contested, or the executor be a minor, or absent from the Territory, or disqualified from acting as such under the provisions of this act, letters of administration shall be granted during the time of such contest, minority, absence, or disqualification, to some other person, who shall take charge of the property, and administer the same according to law, under the direction of said court, and account for and pay and deliver all the money and property of the estate of the deceased to the executor or regular administrator when qualified to act.

SEC. 14. Every applicant for letters of administration, at the time of the application shall make an affidavit stating to the best of his knowledge and belief the names and places of residence of the

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heirs of the deceased, that the deceased died without a will, that he or she will make a perfect inventory of, and faithfully administer all the estate of the deceased, and pay the debts as far as the assets will extend and the law direct, and account for and pay all assets which shall come to his possession or knowledge.

SEC. 15. A similar affidavit shall be made, with such variations as the case may require, by the administrators of goods remaining unadministered, and by administrators during the time of contest about a will, or the minority, inability, or absence of the executor appointed therein.

SEC. 16. Every administrator, with the will annexed, and ex-executor, at the time letters are granted to him, shall make an affidavit that he or she will make a perfect inventory of the estate and faithfully execute the last will of the testator, pay the debts and legacies as far as the assets will extend and the law direct, render just accounts, and faithfully perform all things required by law touching such executorship or administration.

SEC. 17. The probate court, or the judge or clerk thereof in vacation, shall take a bond of the person to whom letters of administration are granted, with two or more sufficient securities, residents of the county, to the people of the Territory of Montana, in such amount as the court, judge, or clerk thereof shall deem sufficient, in not less than double the amount of the estate.

SEC. 18. The condition of such bond shall be as follows: The condition of the above is that if A. B., administrator of the estate of W. C., deceased, shall faithfully administer said estate, account for, pay, and deliver all money and property of said estate, and perform all other things touching said administration required by law or the order or decree of any court having jurisdiction, then the above bond to be void, otherwise to remain in full force, on which bond suit may be brought in the name of the people of the Territory of Montana, by and to the use of any person injured by said administrator, in any court of said Territory having jurisdiction.

SEC. 19. A similar bond, with such variations as the case may require, shall be given by all executors and administrators, with the will annexed, or of the goods remaining unadministered, and all administrators during the time of contest about a will, or of the minority, absence, or disqualification of an executor.

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SEC. 20. No judge of probate, no sheriff, marshal, clerk of a court, or deputy, or either, and no attorney at law, shall be taken as security in any bond required to be taken by this act.

SEC. 21. The probate court, or the judge or clerk thereof in vacation, shall take special care to take as securities men who are solvent and sufficient, and who are not bounden to many other bonds; and to satisfy themselves, they may take testimony, or examine on oath the applicant or person offered as his securities.

SEC. 22. The probate judge, or the clerk of said court, shall record, in a well bound book kept for the purpose, all bonds given by executors and administrators, as also their affidavits, and shall preserve the originals in regular files, and present all such as are taken by him in vacation to the probate court at the next session, for the approval or rejection of the court at the next session.

SEC. 23. The probate court shall approve or reject the bonds taken by him, or the clerk thereof in vacation, and shall cause to be entered such approval or rejection on the records, and endorse a copy of such entry on the bond.

SEC. 24. If the bond be rejected, the court shall order the executor or administrator to give another bond with sufficient security; and if he fail to give such security or bond within such time as the court shall direct, his letters shall thenceforth be deemed to be revoked.

SEC. 25. Such bond shall be valid until such new bond be given notwithstanding its rejection by the court.

SEC. 26. All letters testamentary, and of administration, shall be recorded by the clerk of the probate court in a well bound book kept for that purpose, before they are delivered to such executor or administrator, and the clerk or judge shall certify on the letters that they have been recorded.

SEC. 27. If any clerk or judge shall deliver such letters without recording the same, and if delivered by the clerk he may be fined by the court at its discretion, or if delivered by the judge or clerk aforesaid, they or either of them so delivering the same shall forfeit to the party injured, double the damages occasioned by such default.

SEC. 28. Copies of such letters and copies of the record thereof certified under the seal of the probate court shall be evidence.

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SEC. 29. All letters testamentary to be issued to executors under the provisions of this act, may be in the following form:

TERRITORY OF MONTANA, } ss.
County of ———— }

To all persons to whom these presents shall come; Greeting: Know ye, that the last will of A. B., deceased, in due form of law, has been exhibited, proved and recorded in the probate court for ———— county, a copy of which is hereto annexed, and inasmuch as it appears that C. D. has been appointed executor, in and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator: We do hereby appoint and authorize him, the said C. D., as such executor, to collect, and secure all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, in whosesoever possession the same may be found, and to perform all such duties as may be enjoined upon him by said will, so far as there shall be property and the law charge him, in general to do and perform all other things which are now or hereafter may be required of him by law.

In testimony whereof, I, J. L., of the probate court, have hereunto set my name and affixed the seal of said court at my office this —— day of ————, A. D. 186—.

J. L., Judge. Clerk.

SEC. 30. Letters of administration hereafter to be issued in this Territory may be in the following form:

TERRITORY OF MONTANA, } ss.
County of ———— }

To all persons to whom these presents shall come; Greeting: Know ye, that whereas A. B., late of the county of ————, died intestate as it is suggested, having at the time of his death property in this Territory which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; to the end therefore that the said property may be collected, preserved and disposed of, according to law; and do hereby appoint C. D. administrator of all and singular the goods and chattels, rights and cred-

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its, which were of the said A. B. at the time of his death; with full power to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or may hereafter be required of him by law.

In testimony whereof, I, ———, of the probate court of ——— county, in said Territory, have hereunto signed my name and affixed the seal of said court, at my office, this —— day of ———, A. D. 186—.

P. S., Clerk, or Judge, as the case may be.

SEC. 31. In all cases where letters of administration, with the will annexed, letters of administration *de bonis non*, or during minority, or absence, or inability, shall hereafter be issued by the probate court, or the clerk or judge thereof, in vacation, the same shall be issued in conformity to the foregoing forms, as near as may be to suit each particular case.

SEC. 32. If after letters of administration be granted, a will of the deceased be found and probate thereof be granted, the letters shall be revoked; letters testamentary or of administration with the will annexed shall be granted.

SEC. 33. If a will be proved, and letters thereon be granted, and the will afterwards be set aside, the letters granted thereon shall be revoked, and other letters granted of the goods unadministered.

SEC. 34. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereof devolve upon him, but the marriage shall extinguish her power, and her letters be revoked.

SEC. 35. If any executor or administrator becomes of unsound mind, or be convicted of felony or other infamous crime, or become an habitual drunkard, or a non-resident of the Territory, or otherwise incapable or unsuitable to execute the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or administrator, the probate court, upon complaint in writing made by any person interested, supported by affidavit and due notice given to the person complained of, or his agent or attorney, shall hear and determine

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the complaint, and, if he find it just, shall revoke the letters granted.

SEC. 36. If any heir, legatee, creditor, or other person interested in any estate, file in the probate court an affidavit stating that the affiant has sufficient cause to believe, and does believe, that the security in the executor's or administrator's bond has, or is likely to, become insolvent, has died, or has removed from the Territory, or that the principal in such bond has, or is likely to, become insolvent, or is wasting the estate, or that the penalty of any such bond is insufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten days notice of the complaint, the said court shall examine into the complaint.

SEC. 37. If any person bound as security in the executor's or administrator's bond, file in the probate court a complaint verified by affidavit, stating that the affiant has sufficient cause to believe, and does believe, his co-security has died, or has, or is likely to, become insolvent, or has removed from the Territory, or that the principal in such bond has, or is likely to, become insolvent, or is wasting the estate, and shall have given to the principal in such bond at least ten days notice of such complaint, the court shall examine into the complaint.

SEC. 38. If the probate court find the complaint mentioned in either of the preceding sections to be true, it shall order another bond and sufficient security to be given.

SEC. 39. Such additional bond, when given and approved, shall discharge the former securities from any liabilities arising from any misconduct of the principal after filing the same, and such former securities shall only be liable for such misconduct as happened prior to the giving of such new bond.

SEC. 40. If such person fail to give such additional bond, and security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

SEC. 41. It shall be the duty of the probate court, whenever it shall appear necessary and proper, to order an executor or administrator to give other and further security; first giving such executor or administrator at least five days notice of such intended order; and if such executor or administrator shall fail to give such further

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security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

SEC. 42. If any executor or administrator publish for four weeks in some newspaper published in the county where the proceedings are had, if there be one, and if not, in the nearest newspaper to such county, a notice of his intention to apply to the probate court to resign his letters, and the court on proof of such publication shall believe that he or she should be permitted to resign, it shall so order.

SEC. 43. Such person shall then surrender his letters, and his power from that time shall cease, and he shall pay the expenses of the publication.

SEC. 44. If there be more than one executor or administrator of an estate, and the letters or part of them be revoked or surrendered, or a part die, those who remain shall discharge all the duties required by law, respecting the estate.

SEC. 45. If all the executors or administrators of an estate die or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration of the goods remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced the administration; and the administrator shall perform the like duties, and incur the like liabilities, as the former administrator or executor.

SEC. 46. If any executor or administrator die, resign, or his letters be revoked, he or his securities shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administator, all money, real or personal property of every kind, and all credits, rights, and evidences of debt, and papers of every kind, of the deceased; at such time and in such manner as the court shall order, on final settlement with such executor or administrator, or his or her legal representatives.

SEC 47. The succeeding administrator, or remaining executor or administrator, may proceed at law against the delinquent and his securities, or either of them, or against any other person possessed of any part of the estate.

SEC. 48. All such suits against securities shall be commenced

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within seven years after the revocation, or surrender of the letters, or the death of the principal.

SEC. 49. If any executor or administrator fail to make either annual or final settlements as required by law, and do not show good cause for such failure after citation, the probate court shall order the executor or administrator to give notice when required, and to make such settlement, or may revoke his letters, or may fine or imprison him until such settlements are made, and the orders of the court complied with.

SEC. 50. In all cases where citation or attachment may be issued against an executor or administrator, for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

OF PARTNERSHIP ESTATE.

SEC. 51. In case of a death of a member of a copartnership, any surviving partner resident of this Territory, shall have the right to give the bond hereinafter required, to take an inventory of the partnership effects in the presence of witnesses, appointed as provided by law, to cause the same to be appraised, and do all other things touching the administration of the partnership effects in the manner provided by this act; but when the surviving partner administers, his administration shall be had in the county in which the partnership business was conducted.

SEC. 52. The executor or administrator on the estate of the deceased member of the copartnership shall include in the inventory which he is required by law to return to the probate court, the gross amount of the partnership estate, as inventoried and appraised, as provided in the preceding section; but the executor or administrator shall charge himself with an amount equal only to the deceased's proportional part of the copartnership interest.

SEC. 53. If the surviving partner shall not have administered on the estate at the time the executor or administrator of the individual estate of the deceased partner shall proceed to take his inventory, it shall be the duty of such executor or administrator to include in the inventory which he is required by law to return to the probate court, the whole of the partnership estate, goods, chattels, rights and credits, appraised at their true value as in other

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cases; but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the copartnership interest.

SEC. 54. The property appraised as provided in the last preceding section, shall remain with, or be delivered over, as the case may be, to the surviving partner, if a resident of the Territory, who may be disposed to undertake, within ten days, letters testamentary, or if administration shall have been granted on the estate of the deceased partner, the mangement thereof, agreeably to the conditions of a bond which he shall be required to give to the people of the Territory of Montana, in such time, and with such securities, as is required in other cases of administration.

SEC. 55. The condition of the bond required to be given by the surviving partner desiring to administer upon the partnership estate, shall be in substance as follows: The condition of the above bond is that if A. B., surviving partner of the late firm of ———, shall use due diligence and fidelity in closing the affairs of the late copartnership, apply the property towards paying the copartnership debts, and render an account annually, or oftener if required by the probate court having jurisdiction, upon oath in said probate court, of all the partnership affairs, including the property owned by the late firm and the debts due them, as well as what may have been paid by the survivor or survivors towards the partnership debts, and what shall be due and owing therefor, and pay over within one year, unless a longer time be allowed by the probate court to the executor or administrator of the individual estate, the excess, if there be any beyond satisfying the partnership debts and costs, and expenses in closing the affairs of the copartnership, and coming to said dead partner, then the above bond to be void, otherwise to remain in full force.

SEC. 56. Any bond required by this act may be executed by the surviving partner in the county in which he resides, and may be acknowledged before, and approved by, the probate court, or the clerk of such county, and shall be certified to by the court having probate jurisdiction, in the county in which administration has been granted on the estate of the deceased partner, and a bond in a sufficient amount, thus taken, shall be valid and effectual, as if it had been executed and approved in the manner prescribed in the two preceding sections.

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SEC. 57. The probate court shall have the same authority to cite such survivor to account, to adjudicate such account, to order payments of demands allowed, and to require additional bonds, as in other cases of ordinary administration, and the parties interested shall have the like remedies, by means of such bonds, for any misconduct or neglect of such survivor as may be had against administrators.

SEC. 58. In case the surviving partner shall neglect or refuse to give the bonds required by this act, within the time herein limited, the executor or administrator of the individual estate of the deceased partner, on giving bond as required in the following sections, shall forthwith take the whole partnership estate, goods and chattels, rights and credits, into his own hands, and shall be authorized to use the name of the survivor in collecting the debts of the late firm, if necessary, and shall with the partnership property pay the debts due from the late firm, and the cost and expense of administering such partnership property, with as much expedition as possible, and return or pay to the surviving partner his portion of the excess, if there be any.

SEC. 59. Before proceeding to administer upon such partnership estates, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond, to its satisfaction, conditioned that he will faithfully execute that trust, and with no unnecessary waste or expense, which bond may be enforced like other administration bonds.

SEC. 60. Every surviving partner, on the demand of any administrator or executor of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner for appraisment; and in case the administration thereof shall devolve upon such administrator or executor, the said survivor shall surrender to him, on demand, all the property of such partnership, including their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

SEC. 61. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section may be cited for such neglect or refusal before the probate court; and unless he comply with such provisions, or show sufficient cause for his omis-

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sion, the probate court may commit him to the common jail of the county, there to remain until he consent to comply, or is discharged by due course of law.

SEC. 62. In all cases when the surviving partner administers upon the partnership effects, he shall have power to pay off demands against the partnership without requiring the same to be exhibited for allowance to the probate court; and such court shall allow such partner in his settlement, as credits, all demands which he may thus discharge, provided said court shall be satisfied of the justness of the demands. But when such partner shall refuse to pay demands against the partnership estate, and when the administrator or executor of the deceased partner's individual estate takes charge of the partnership effects, all such demands shall be exhibited to the probate court for allowance and classification; and the court shall have the same jurisdiction of demands thus presented as it has of demands against estates in ordinary cases; but no judgment or allowance of the probate court against such survivor or administrator or executor shall bind any other property of the survivor or administrator or executor except the partnership effects.

SEC. 63. All demands presented for allowance or payment against the partnership effects within the first year after the grant of the administration shall be placed in the first class, and all demands presented after the expiration of one year from the granting of the letters shall be placed in the second class, and all claims not presented or paid within two years from the date of the letters shall be forever barred against the partnership effects administered upon. But in case of any demand against the partnership estate being allowed and paid by the executor or administrator out of the private estate of the deceased partner, then such payment so made shall be charged against the partnership effects, and shall be allowed and included in the final settlement of the partnership administrator or executor.

SEC. 64. In all cases where the administrator or executor of a deceased partner shall under the law take charge of the partner's effects, and a demand against such partnership shall be presented for allowance, any surviving partner or creditor of such partnership shall be entitled to appear in any probate court and defend against the recovery of such claim, and may have the right to appeal from the judgment of the probate court, upon making a simi-

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lar affidavit and giving such bond as required in other appeals from such court.

SEC. 65. The administration upon the partnership effects shall, except as otherwise specially provided in the last preceding section, relating to administration upon partnership effects, conform so far as the provisions of this act may be applicable to administrators in ordinary cases, and the person administering upon the partnership effects, and his securities in his official bond, shall perform the same duties, be governed by the same limitation and restrictions, and subject to the same penalties as other administrators and their securities.

SEC. 66. If any executor or administrator resign, or his letters be revoked, the probate court shall have power, upon the application of his successor or the remaining executor or administrator, to ascertain the amount of money, the quantity and kind of real and personal property, and all the rights and credits, deeds, evidences of debt, and papers of every kind, of the testator or intestate, in the hands of such executor or administrator at the time of his resignation or removal from office, and to order and adjudge the rendition of the same to the successor of such executor or administrator, and to enforce such order and judgment against such executor or administrator and his securities in the following manner: First, For the amount of money specified in the judgment, by the execution in the ordinary form. Second, For all other estate, effects, and papers described in the judgment or order, by attachment against the person or property of such executor or administrator, and in case of the executor or administrator failing or refusing to produce any of the aforesaid effects, proven to be in his possession, the probate court may imprison him or them in the common jail of the county until he complies with such order or decree.

SEC. 67. If any executor or administrator die, the probate court shall have the power, upon application of his successor, or the remaining or surviving executor or administrator, to ascertain the amount of money in the hands of such deceased executor or administrator in his representative capacity at the time of his death, and to render judgment against his securities for the amount so ascertained, and to enforce such judgment by execution in the ordinary form.

SEC. 68. If any executor or administrator die, the probate

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court shall have power, upon the application of his successor, or the remaining or surviving executor or administrator, to ascertain what quantity and kind of real and personal property, and all the rights, credits, deeds, evidences of debt, and papers of every kind, of the testator or intestate in the hands of such deceased executor or administrator at the time of his death, and order the legal representatives of such deceased executor or administrator to deliver the same to his successor, or the remaining or surviving executor or administrator, and to enforce such order by attachment against the person or property of such legal representatives of the deceased executor or administrator, or by imprisonment in the common jail of the county.

SEC. 69. No judgment or order shall be rendered against any of the parties mentioned in the two preceding sections until they shall have been served with notice in writing, or citation, at least ten days before the sitting of the court, and of the time and place of the sitting thereof; such notice shall also state the general object and nature of such judgment or order demanded.

SEC. 70. Such notice shall be issued and signed by the judge or clerk of such court, and served by the sheriff or other ministerial officer of the county or court, in the same manner prescribed by law for the service of process in civil actions.

SEC. 71. The court may proceed against the parties served with process, and dismiss as to those not served, or continue the proceeding until the next term of such court, and issue new process or notices against those not served, at their discretion.

ARTICLE II.

OF THEIR DUTIES RESPECTING MONEY AND PROPERTY.

1. Executors and administrators, to collect and take charge of estate.
2. To take and return inventory.
3. Affidavit to be annexed to the inventory.
4. Additional inventories, when to be made.
5. Witnesses shall be appointed to accompany executor or administrator in opening and examining effects of deceased, and to aid in making inventory.
6. To open and examine effects of deceased without witnesses, penalty for.
7. Affidavit filed against persons concealing or embezzling effects, citation to issue.

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8. Same proceeding may be had against an executor or administrator as in cases of other persons.
9. Refusing te answer interrogatories, may be committed to jail.
10. If party charged and cited appear and answer, trial to be in a summary manner.
11. In case of conviction, court may compel delivery of effects.
12. Estate to be appraised by whom.
13. Affidavits of appraisers.
14. Duty of appraisers.
15. Inventory appraisement affidavit, when and where to be filed.
16. Compensation of appraisers, &c.
17. Additional appraisement, when to be made.
18. Inventories and appraisements, how far evidence.
19. When and how notice to creditors shall be published.
20. Such notice not to be given by the successor, when.
21. Notice to be given by the successor, when and how.
22. When and how to advertise when there are no known heirs.
23. Administrator may collect debts, give receipts and prosecute and defend actions.
24. What actions executors and administrators may prosecute and defend.
25. Competent witnesses in certain cases.
26. What actions may be maintained by and against executors and administrators.
27. Not to extend to certain actions.
28. Debts due by executors or administrators to testator or intestate, assets in his hands.
29. Debtor appointed executor, his debts considered as assets.
30. Articles allowed the widow.
31. Widow has maintenance out of her own property, the whole to go to the children, value out of assets.
32. Property not taken, proceeds to be paid the widow.
33. Sale of perishable property, how made.
34. If insufficient to pay the debts, other personality to be sold.
35. Bonds and notes may be assigned to creditors, legatees and distributees.
36. Notice of sale, how and when given.
37. Estate of testators, when not to be sold.
38. All personal estate to be sold where there are no known heirs.
39. Clerk to be employed at public sale.
40. His duties.
41. Sale bill, when and where filed.
42. Real estate leased and rented by order of court.
43. Real estate not wanted to pay debts shall go to the heirs.
44. Repairs on real estate made by order of court.
45. Inventories, appraisements and sale bills filed.
46. Assistance in taking care of estates, when to be procured.
47. Further assistance, when authorized, expenses how paid.
48. Interest on debts when assets, when to be paid by executor or administrator.
49. To be accounted for under the equitable control of the court.
50. Statement on oath of money on hand, when to be rendered.
51. Disposition of money on hand, when and how made.
52. Orders for collection, sale and distribution, when made.

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53. Executors and administrators may give receipts and discharges; effect of.
54. If property bound by lien of execution, duty of executor or administrator to sell the same.
55. Proceeds, how applied.
56. Preceding provisions not to extend to certain cases.
57. In certain cases real estate not to be rented, and only portions of personal estate to be sold.
58. Appraisement, such property to be left in possession of the widow or family.
59. Suspension of rent, or sale of such property, may be ordered in vacation of court.
60. In case of injury or waste to such property the court may rescind such order.
61. Courts may continue proceedings, when.
62. Mining claims may be sold by order of court; sale of U. S. certificates.
63. Of the terms and conditions of such certificates of record to be assigned, how and by whom.

SEC. 1. Every executor, and administrator, immediately after receiving letters, shall collect and take into possession, the goods, chattels, money, books, papers, and evidences of debt and of title to real or personal estate, except the property reserved as the absolute property of the widow.

SEC. 2. He shall make an inventory of all the real and personal estate of the deceased, describing the quantity, situation, and title, the real estate, also the books and papers, the debts due or to become due to the deceased, the names of debtors, the date of contracts, the amount of interest then due thereon, the rate of interest, and such further description as will render it a perfect inventory of the estate.

SEC. 3. He shall annex to the inventory an affidavit stating that it is a full inventory and description of all the money, goods, chattels, and estate real and personal, books, papers, and evidences of debt, and of title of the deceased, and of all debts due and becoming due, so far as he can ascertain them, except the property reserved as the absolute property of the widow, and that he was not indebted and bound in any contract to the deceased, at the time of his death, except as stated in the inventory.

SEC. 4. If, after making the first inventory, any other real or personal estate of the deceased come to his knowledge or possession, he shall file a similar additional inventory thereof.

SEC. 5. At the time of appointing an administrator, or granting letters testamentary to an executor, the probate court, or if granted in vacation, the judge or clerk, shall name two respectable

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persons, residents of the vicinity of the last abode of the deceased, who are disinterested and of no kin to the administrator or executor, as witnesses to accompany and aid the administrator or executor in opening and examining the papers, money and other property of the deceased, and in making an inventory thereof; and if they fail to attend, the court, judge or clerk shall appoint others in their stead, so that two witnesses shall be present to attend the proceeding, before it shall be lawful for any executor or administrator to open or examine such papers, money or other property, by virtue of his appointment

SEC. 6. If any administrator or executor open or examine the papers, moneys or other property of the deceased, without the publicity and attestation provided in this act, he shall forfeit and pay to the persons entitled to the estate a sum not exceeding five thousand dollars, to be recovered before the probate court.

SEC. 7. If the executor or administrator or other person interested in the estate file an affidavit in the probate court, stating that the affiant has good cause to believe and does believe that any person has concealed or embezzled any goods, chattels, money, books, papers, evidences of debt, or title of the deceased, and has them in his or her possession, or under his or her control, the probate court may cite such person to appear before said court, and compel such appearance by attachment, and examine him or her, and other witnesses, on oath, for the discovery of the same.

SEC. 8. If any person interested in any estate file a like affidavit against an executor or administrator, the probate court shall have the same power to cite him or her, and compel his or her attendance and examination, as in case of other persons.

SEC. 9. If any such person refuse to answer proper interrogatories, the probate court may commit such person to the common jail of the county until such answer is made and filed, or be discharged by due process of law.

SEC. 10. If any person charged and cited as aforesaid, shall appear, and, in his answer to the interrogatories, deny the truth of the facts alleged in the affidavits, the issue shall be tried by a jury, or if neither party require a jury, by the court in a summary manner, and judgment shall be rendered according to the finding and for costs.

SEC. 11. If any person be convicted of unlawfully detaining

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such goods, moneys, chattels or effects, books, papers, or evidence of debt, the court may compel the delivery thereof by attachment, or in case the person convicted be the executor or administrator, compel him to inventory, and to have the same appraised, and may commit him or her to the common jail of the county until compliance with the order or judgment of said court be made.

SEC. 12. After having collected the personal estate, the executor or administrator shall cause the same to be appraised by three disinterested householders of the county.

SEC. 13. Before entering on their duties, the appraisers shall make an affidavit, stating that they are not interested in, nor of kin to any person interested in the estate as heir or devisee, and that they will to the best of their abilities review and appraise the real and personal estate to them shown.

SEC. 14. The appraisers shall view and appraise such property, and make a list specifying each article appraised, its value, and total amount of appraisement, which shall be signed by said appraisers, or any two of them.

SEC 15. The inventory, appraisement and affidavit shall be filed in the office of the probate court, within thirty days after letters are granted, or the said court may for good cause prolong the time of filing the same, and it shall be the duty of said judge or clerk to record the same in a well bound book provided for that purpose.

SEC. 16. Each appraiser and witness to the inventory shall receive five dollars per day from the estate, for his attendance.

SEC. 17. Every executor and administrator shall cause similar appraisements to be filed of all personal estate which shall come to his possession after the first appraisement, which shall be recorded as provided in this act.

SEC. 18 Inventories and appraisements may be given in evidence, and in the absence of the originals, authenticated copies of the record of such inventories and appraisements shall also be received in evidence, but neither shall be conclusive for or against any executor or administrator, but other evidence may be introduced to vary the effect thereof.

SEC. 19. Within twenty days after letters are granted, the executor or administrator shall publish in some newspaper in this Territory, for three weeks, a notice that letters testamentary or of

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administration have been granted to him, stating the date, and requiring all persons having claims against the estate to exhibit them for allowance within one year after the date of the letters, or they may be precluded from any benefit of such estate, and that if such claims be not exhibited within two years from the date of the letters they shall be forever barred.

SEC 20. It shall not be necessary for any successor to an administrator or executor, to publish notices, as required by the preceding section, if such notices shall have been published by any preceding executor or administrator of the estate

SEC. 21. Such successors shall within thirty days after letters are granted, publish in some newspaper in the Territory, for three weeks, a notice, and shall post up, to the number of three, similar notices in the county where letters testamentary have been granted, in three of the most public places, one of which shall be upon the court-house, that letters testamentary have been granted to him, stating therein the date of the cessation on the letters of the preceding executor or administrator.

SEC. 22. When an intestate has left no known heirs, the administrator shall also publish a notice for six weeks in some newspaper in this Territory, and shall post up to the number of three similar notices in the county where letters are granted, in the most public places, one of which shall be upon the court-house, containing the name of the intestate, a description of his person, the time and place of his death, the place of his nativity if known, and the appraised amount of his estate.

SEC 23. Executors and administrators shall collect all moneys and debts of every kind due, to the deceased, and give receipts and discharges therefor, and shall commence and prosecute all actions which may be maintained and are necessary in the course of his administration, and defend all such as are brought against him.

SEC. 24. They shall prosecute and defend all actions commenced by or against the deceased, at the time of his death, and which might have been prosecuted or maintained by or against such executor or administrator.

SEC. 25. In all actions prosecuted by or against any executor, or administrator, he shall not be disqualified from being a witness, as to facts occurring anterior to his qualification, on account of his being executor or administrator.

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SEC. 26. For all wrongs done to the property, rights, or interests of another, for which an action might be maintained against the wrong doer, such action may be brought by the person injured, or after his death against his executor or administrator, in the same manner and with like effect in all respects as actions founded upon contract.

SEC. 27. The preceding section shall not extend to actions of slander, libel, assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator.

SEC. 28. All debts due by an administrator to his testator or intestate shall be considered as assets in his hands.

SEC. 29. If any person appoint his debtor executor of his will, such appointment shall not discharge the debt, but it shall be assets in his hands.

SEC. 30. In addition to dower, the widow shall be allowed as her absolute preperty the family bible, and other books, not to exceed in value the sum of two hundred dollars, all spinning wheels, weaving looms, and stoves, put up or kept for use, all family pictures, twenty head of choice sheep, with their fleeces, and all yarn or cloth manufactured from the same, two choice cows, five swine, with the necessary food for them for six months, all wearing apparel of the widow and children, and all household goods, furniture and utensils, not exceeding in value seven hundred and fifty dollars. Second, There shall be set apart for the widow or minor children or child, as the case may be, the homestead, consisting of a quantity of land not exceeding twenty acres, and the dwelling-house thereon, with its appurtenances, not being included in any incorporated town or city, or instead thereof a quantity of land, not exceeding one lot, in any incorporated town or city, and the dwelling-house thereon, and its appurtenances, to be selected by the widow, or if there be no widow to be designated by the probate judge, and not to exceed in value in any case more than three thousand dollars. Third, If the deceased shall have left a widow, and no minor child or children, such property shall be the property of the widow; if he shall have left a minor child or children, one-half of such property shall belong to the widow, and the remainder shall remain for the use of the child or children until the youngest shall attain the age of

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twenty-one, then the same shall be equally divided amongst all the children of said deceased. If there be no widow, the whole shall belong to the children of the deceased, the infants having the benefit thereof during their minority, after that period to be divided equally amongst the children.

SEC. 31. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the provisions of the foregoing sections of this act, the whole property so designated shall go to the children, upon the same terms and restrictions provided in the foregoing sections.

SEC. 32. If the widow or infant children do not receive the property thus allowed her or them, and the same be sold by the executor or administrator, the probate court shall order the money to be paid to the widow or children at any time before the same be paid out for debts or be distributed.

SEC. 33. Every executor or administrator after the appraisment shall sell at public sale all the goods and chattels of the deceased that are liable to perish, be consumed, or rendered worse by keeping, giving such credit as he may think best, not exceeding six months, and take bonds or notes, with good security, of the purchaser.

SEC. 34. If the perishable goods be not sufficient to pay the debts, the executor or administrator shall in the same manner sell other personal estate, until the debts and legacies be paid, but specific legacies shall not be sold in any case unless it be necessary for the payment of debts.

SEC. 35. Executors and administrators may assign the notes and bonds of the estate to creditors, legatees, and distributees, in discharge of such an amount of their claims, equal to the amount of such bond or notes.

SEC. 36. They shall give notice of the time and place of sale, not less than ten days nor more than twenty days, in some newspaper in this Territory, or by handbills put up in eight public places in the county where the sale is made.

SEC. 37. If any testator direct his estate not to be sold, the same shall be reserved, unless such sale be necessary for the payment of debts.

SEC. 38. When there are no known heirs or legal representa-

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tives, the administrator shall sell all the personal estate of the deceased within six months after administration is granted.

SEC. 39. In every public sale, the executor or administrator shall employ a competent clerk, not interested nor of kin to any heir or devisee of the estate.

SEC. 40. Such clerk shall keep a true account of the sales made, make a list of such sales, specifying each article sold, the price, and the name of the purchaser, and shall annex his affidavit to such list, stating that the same is a true account of the sales made by such executor or administrator at the time specified.

SEC. 41. Such sale bill shall be filed by the executor or administrator in the probate office in the county in which letters were granted within ten days after the sale, and it shall be evidence in the like manner and with like effect as inventories.

SEC. 42. Every executor and administrator, under the direction of the probate court, shall lease the real estate for any term not more than one year, and shall receive and recover such rent, and shall regularly account to said court for all such rents.

SEC. 43. When the probate court shall be satisfied that any real estate may not be sold or leased for the payment of debts of the estate, the executor or administrator may be ordered to deliver possession of the same to those entitled to it.

SEC. 44. When any house, or out-house, fence, or other improvement on the real estate, require repairs, the probate court may, on the application of any person interested, cause the necessary repairs to be made without prejudicing the creditors.

SEC. 45. At every term of the probate court the judge thereof shall examine all inventories, appraisements, and sale bills, filed since their last term, to see if the same have been made and filed according to law, and shall issue citations to compel all delinquents to comply with the law, and after due notice may fine and imprison such administrator or executor until they comply.

SEC. 46. If any person die leaving live stock that require attention, crops ungathered, or property of any kind so exposed as to be in danger of loss in value, or any work in an unfinished state, so that the estate would suffer material loss from the want of care and additional labor, it shall be the duty of the executor or administrator, until the meeting of the probate court, to procure such

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indispensable labor to be performed on the most reasonable terms that he can.

SEC. 47. The probate court, on the application of any person interested, may in such cases authorize further labor to be performed, as the interests of the estate require; and all sums thus paid, if approved by the court, shall be allowed as expenses of administration.

SEC. 48. All interest received by executors or administrators on debts due to the deceased shall be assets in their hands; and if they lend money of the estate, or use it for their own private purposes, they shall pay interest thereon to the estate, at the highest rate that the money so used could have been loaned.

SEC. 49. The probate court shall at such settlement exercise an equitable control in making executors and administrators account for interest received by them on debts due the estate, and for interest accruing on money belonging to the estate loaned or otherwise employed by them, and for that purpose may take testimony or examine the executor or administrator on oath; and if the court shall be of opinion that any administrator or executor has received interest for which he should account, and fails or refuses so to do, the court may fine or imprison him or them in the county jail until he or she fully accounts.

SEC. 50. Every executor and administrator, at the second term after the one at which he is required to make settlement, shall render to the county court a statement, on oath, of the amount of money of the estate actually on hand.

SEC. 51. If on the return of the inventory, or at any other time, it shall appear to the satisfaction of the probate court that there is a surplus of money in the hands of the executor or administrator that will not be shortly required for the expenses of administration or payment of debts, the court shall have discretionary power to order him or her to lend out the money on such terms, and for such time as they may judge best.

SEC. 52. The probate court may at any time make such orders as the interest of the estate may require for the speedy collection of debts or the sale and distribution of personal property.

SEC. 53. All executors and administrators may give receipts and discharges for money received by him on account of the deceased; but if there be more than one executor or administrator, a

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majority of them shall join in such receipt or discharge, or they shall be void.

SEC. 54. If any personal property shall be bound by the lien of an execution or executions, or whether such execution or executions shall have been levied or not, or shall be bound by the lien of an attachment at the time of the death of the intestate, the executor or administrator shall nevertheless inventory, cause to be appraised, and sell the same as if no such lien existed, except that a separate inventory, appraisement, and sale bill of such property, shall be made and returned.

SEC. 55. The proceeds of the sale of such personal property shall be applied, under the direction of the probate court, in the following manner: First, When there is but one execution or attachment, to the payment of such execution or attachment, and the residue, if any, shall be assets to be administered according to law. Second, When there is more than one execution or attachment, or both such execution and attachment, the liens whereof are of even date, to the payment of such execution and attachment, and the residue, if any, shall be assets to be determined according to law; but if such proceeds shall not be sufficient to pay the whole, then to the payment thereof according to their priority of lien.

SEC. 56. The provisions of the three preceding sections shall not be construed to deprive the widow of the benefit of any provisions of the preceding sections of this article, nor to deprive the demands classed in the first and second subdivisions of the first section of the fourth article of this act of their precedence over all other demands against the estate of the deceased.

SEC. 57. In all cases when any person shall die leaving a widow or other family, the probate court has power, if in its opinion it will not be prejudicial to creditors, and will be advantageous to such widow, or others entitled to distribution of the estate, to order that none of the real estate shall be rented or leased, and that no more of the personal estate be sold than will be sufficient to pay the debts; but the probate court shall take good and sufficient security that the property shall be forthcoming to answer the demands of any creditors or others concerned in the estate.

SEC. 58. In the cases specified in the preceding section, the executor or administrator shall make an inventory and appraisement of the estate as in other cases, but he shall leave such property as

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is ordered not to be sold in possession of the widow or other family, who shall use and enjoy the same until the probate court shall order such property to be administered upon.

SEC. 59. If the real estate is about to be leased or rented, or property about to be sold, in vacation of the probate court, the judge of said court shall have power, upon the presentation of the petition in writing from the administrator or executor, or any other person interested in the estate, to order the suspension of such lease, or renting, or sale, as the case may be, until the next session of the probate court.

SEC. 60. In any case when the court has ordered that real estate should not be rented, or the personal property not sold, if it shall appear to the probate court that such real estate or personal property is likely to be injured or wasted, or that those interested therein would be benefited thereby, such court shall order such estate to be forthwith administered, and in such cases the rights of all persons interested shall be the same as if the order provided for in the sixtieth section of this article had not been made.

SEC. 61. For good cause shown, the probate court may continue any matter or proceeding arising before it under this act, on such terms as it may consider just.

SEC. 62. The probate court shall have power, upon petition presented by any executor or administrator, to order the sale of any land, scrip, or certificate of location of any quartz claim, or claims, that the deceased may have to any claim on any quartz lode, as provided for in the next article of this act, and all such sales shall be upon the same terms and conditions as provided in cases of real estate.

SEC. 63. The executor or administrator in all sales provided for in the last section, shall, after payment of the purchase money thereof, have full power to assign such certificate of location to the purchaser, and acknowledge such assignment before the clerk of some court of record.

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ARTICLE III.

Of their Duties respecting the Sale of Real Estate.

1. Power by will to sell land to be executed by executor or administrator, if no other be appointed for the purpose.
2. Contracts for purchase of lands may be carried into effect by order of the probate court, if assets sufficient.
3. Interest of testator or intestate to be sold, if the assets are not sufficient to fill contract.
4. Court may order lands to be relinquished from individuals.
5. The probate court may order the redemption of property ; how, and in what cases.
6. No sale of mortgage property within three months after the death.
7. Court may order the equity of redemption to be sold.
8. In all cases of relinquishment, executor or administrator competent to make a deed ; effect thereof.
9. If personal estate is insufficient to pay debts, petition to sell real estate to be filed.
10. If real estate bound by lien of judgment or attachment, to be stated in petition.
11. Proceeds of sale to be applied to payment of such judgment or attachment, remainder to become assets.
12. If real estate bound by several judgments or attachments, to be stated in petition.
13. Proceeds of sale to be applied to the payment of such judgments or attachments according to priority of lien.
14. Residue of proceeds to become assets.
15. If lien of such judgments or attachments be even, proceeds how applied.
16. If real estate bound by lien of several judgments or attachments be sold under junior judgment, facts to be stated in petition.
17. Plaintiff in junior judgment, and purchaser to be notified of such petition ; what notice shall contain.
18. Notice to be published, how.
19. Purchaser prevailed to pay prior judgment and attachments, when.
20. Failing to pay, real estate to be sold, free from encumbrances ; proceeds, how disposed of.
21. Petition to be accompanied by a true account of administration, verified by affidavit.
22. Executors or administrators failing to make such application, others may ; notice to be given.
23. Before the time of such application, executors or administrators to make perfect accounts, &c.; failing to comply, may be attached.
24. When such petition, accounts, &c., are filed, court shall order notice to be given; when, and how published.
25. Upon proof of publication, court to hear testimony, and if necessary, to order sale.

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26. Personal estate may be reserved, and real estate sold.
27. Real estate to be appraised before sale.
28. Affidavit to be made by appraisers.
29. Notice of sale, how published.
30. When sale of real estate shall be made, and how conducted.
31. Not to be sold at private sale, nor shall executor or administrator purchase at less than its appraised value.
32. Report of sale, how made.
33. If report be not approved by court, new order to be made.
34. If report be approved, deed to be made.
35. Proceedings to obtain a deed, after death, removal, &c., of the executor or administrator, to land sold by him.
36. Effect of deed.
37. Contract for the conveyance of real estate by testator or intestate, how enforced.
38. Affidavit to be annexed to petition.
39. Notice to be served on executor or administrator.
40. Court to make an order for specific performance of contract, saving to infants, married women, &c.
41. Upon such order, executor or administrator to execute deed.
42. Effect of such deed.
43. Petition for specific performance of, may be brought in district court in first instance; may be certified, district court.
44. District court in such cases to proceed, how.
45. Proceeding by executor or administrator for specific performance of contract made by testator or intestate.
46. In what cases mining claims to be sold, and the mode and manner of such sale; also, real estate, &c.

SEC. 1. The sale and conveyance of real estate, under a will, shall be made by the acting executor, or administrator with the will annexed, if no other person be appointed by the will for that purpose, or if such person fail or refuse to perform the trust.

SEC. 2. If any person die having purchased real estate, and shall not have completed the payment, or devised such estate nor provided for the payment by will, and the completion of such payment would be beneficial to the estate, and not injurious to creditors, the executor or administrator, by the order of the probate court, may complete such payment out of the assets in his hands, and such estate shall be disposed of as other real estate.

SEC. 3. If the court believe that, after the payment of debts, there will not be sufficient assets to pay for such real estate, the court may order the executor or administrator to sell all the right, title and interest of the deceased therein.

SEC. 4. If such real estate has been purchased by individuals,

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the court may, if they believe it advantageous to the estate, order the same to be relinquished to such individuals on the most advantageous terms that can be agreed upon.

SEC. 5. If any person die leaving lands encumbered by mortgage, or deed of trust, or any lien whatever, or owing equity of redemption, or having mortgaged or pledged any personal property, and shall have devised the same, or provided for the redemption thereof by will, the probate court shall have power, if in its judgment it will promote the interests of the estate and not be prejudicial to creditors, to order the executor or administrator to redeem the same out of the personal assets of the estate, or to order the sale of other real estate, to redeem such land or personal property so encumbered.

SEC. 6. If any person having given a deed of trust or mortgage, with power of sale, shall die, no sale shall take place under such deed of trust or mortgage, within five months after the death of such person.

SEC. 7. If such redemption would injure the estate, after payment of debts, the court shall order all the right, title and interest of the estate to such property to be sold at public sale.

SEC. 8. In all cases of the relinquishment of the interest of the testator or intestate, under the provisions of the fourth section of this article, and in all cases of the sale of the interest of the testator or intestate under the third and seventh sections of this article, the executor or administrator shall be competent by deed to make such relinquishment, or to convey to the purchaser all the right, title and interest the testator or intestate had in and to such real estate at the time of his death.

SEC. 9. If any person die, and not have personal estate sufficient to pay his debts, the executor or administrator shall file a petition to the probate court, stating the facts, and praying for the sale of the real estate, or so much thereof as will pay the debts.

SEC. 10. If such real estate be bound by the lien of a judgment or attachment, the executor or administrator shall state the fact in his petition, the date and amount of the judgment, and the name of the person in whose favor the same was rendered, and the date of the service of the attachment, the amount claimed thereunder, and the name of the person prosecuting the same.

SEC. 11. The proceeds of the sale of such real estate shall be

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first applied for the payment of such judgment or attachment, and the residue, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

SEC. 12. If such real estate be bound by the lien of several judgments or attachments, or both, the executor or administrator shall state the facts in his petition, the dates and the amounts of such judgments, and the dates of serving and levying, and the amounts claimed by such attachments, and the names of the persons in whose favor the same were rendered, or are prosecuted.

SEC. 13. The proceeds of the sale of such real estate shall be first applied to the payment of such judgments and attachments, according to their priority of lien.

SEC. 14. The residue of such proceeds, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

SEC. 15. If the lien of such several judgments or attachments be of even date, and the proceeds of such sale shall not be sufficient to pay the whole, such proceeds shall be applied to the payment of such several judgments or attachments in proportion to their respective amounts.

SEC. 16. If such real estate, being or having been bound by the liens of several judgments or attachments, shall have been sold under a junior judgment or attachment, the executor or administrator shall state in his petition the facts of such sale, the name of the plaintiff in such junior judgment, the name of the purchaser, the dates, and the amounts of the several judgments and attachments, and the names of the persons in whose favor such judgments were rendered, or such attachments are prosecuted.

SEC. 17. The probate court shall thereupon order that the plaintiff in the judgment under which real estate was sold, and the purchaser thereof, be notified of the filing of such petition, and that unless good cause to the contrary be shown on the first day of the next term, an order will be made for the sale of the whole, or so much of such real estate as will be sufficient to pay the prior judgments or attachments.

SEC. 18. Such notice shall be published as other notices are required to be published in case of petitions for the sale of real estate in virtue of the provisions of this act.

SEC. 19. Such purchaser of such real estate shall have the

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privilege of paying such prior judgments, any time within three months from, and including the first day of the term of the court at which he is notified to appear; or in case of attachments, within three months after any judgment rendered upon the attachment shall be allowed and classed, as provided by law, in the probate court.

SEC. 20. If the purchaser of real estate under such junior judgment shall fail to pay such prior judgment, or judgments upon prior attachments, or both, within the time prescribed within the preceding section, such real estate shall be sold free from the incumbrance of the title derived from the sale under such junior judgments, and the proceeds of such sale shall be disposed of, according to such of the provisions of this article as shall be applicable to the facts of the case.

SEC. 21. The petition to be filed according to the provisions of the tenth section of this article, shall be accompanied by a true account of his administration, a list of the debts due to and by the deceased, and remaining unpaid, and an inventory of the real estate, and of the remaining personal estate with its appraised value, and all other assets in his hands, the whole to be certified by the affidavit of the executor or administrator.

SEC. 22. If such executor or administrator do not make such application, any creditor or other person interested in such estate may make such application, giving twenty days notice to the executor or administrator.

SEC. 23. Every such executor or administrator, on or before the first day of the term of the court at which he is notified that such application will be made, shall file with the clerk of the court perfect accounts, lists and inventories, made out and verified, as those required to accompany a petition by himself. If such executor or administrator fail to comply with this section, the court shall compel him to do so by attachment.

SEC. 24. When such petition and accounts, lists and inventories shall be filed, the court shall order that all persons interested in the estate be notified thereof, and that unless the contrary be shown on the first day of the next term of court, an order will be made for the sale of the whole, or so much of such real estate as will pay the debts of the deceased. Such notice shall be published for four weeks in some newspaper in the county in which such pro-

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ceedings are had, or by ten hand-bills, to be put up at ten public places in said county, at least twenty days before the term of the court at which such order will be made, in the discretion of the probate judge.

SEC. 25. Upon proof of publication, the court shall hear the testimony, and may if necessary, examine all parties on oath touching the application, and make an order for the sale of such real estate, or any part thereof in the Territory, at public sale.

SEC. 26. If any executor or administrator, or other person interested in any estate, file a petition setting forth the facts, and describing the real or personal estate, and praying that the personal estate may be reserved, and real estate sold for the payment of debts, the same steps shall be taken, and the same proceedings and publication had as above directed, upon a petition to sell real estate for the payment of debts, and the court may order the whole or any part of the personal estate to be reserved, and the real estate or any part of it to be sold at public sale.

SEC. 27. Before any executor or administrator shall sell any real estate or any interest therein, by order of any court, he shall have it appraised by three disinterested householders of the county in which the land lies.

SEC. 28. Such appraisers shall make an affidavit that they will according to the best of their abilities view and appraise the estate to them shown; and they shall view and appraise the same, and deliver to the executor or administrator a certificate thereof under their hands.

SEC. 29. In all public sales of real estate, made by any executor or administrator, he shall cause a notice, containing a particular description of the estate to be sold, and stating the time, place and terms of sale, to be published in some newspaper in this Territory, for four weeks, and shall put up a copy of such notice in ten public places in the county in which the sale is to be made, twenty days before the sale.

SEC. 30. All public sales of real estate made by order of any court for the payment of debts, shall be made at the court-house door of the county in which such estate is situated, on some day while the district or probate court is in session, and shall be conducted openly, by auction.

SEC. 31. No real estate sold for the payment of debts shall be

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sold at public sale for less than three-fourths of its appraised value, nor shall the executor or administrator, directly or indirectly, become the purchaser of such real estate at less than its appraised value.

SEC. 32. At the next term of the probate court after such sale, the executor or administrator shall make a full report of his proceedings, with the certificate of appraisement, and a copy of the advertisement, which report shall be verified by affidavit, stating that he did not, directly or indirectly, purchase such real estate, or any part thereof, or any interest therein, and that he is not interested in the property sold except as stated in the report.

SEC. 33. If such report and proceedings of the executor or administrator be not approved by the court, his proceedings shall be void, and the court may order a new sale, upon which the same proceedings shall be had as upon the original order.

SEC. 34. If such report be approved by the probate court, such sale shall be valid, and the executor or administrator, or if he be the purchaser, the judge of the probate court, shall execute, acknowledge and deliver to the purchaser a deed, referring in apt and appropriate terms to the order of the sale and the court by which it was made, the certificate of appraisement, the advertisement, the time and place of sale, the report of the proceedings and order of approval thereof by the court, and the consideration and conveying to the purchaser all the right, title and interest which the deceased had in the same.

SEC. 35. When any executor or administrator shall remove from this Territory, resign, or die, or his letters be revoked, after the sale of any real estate, and before executing any deed therefor, the purchaser may petition the probate court, stating the facts, and if he satisfy the court that the purchase money has been paid, the court shall order the executor or administrator then acting, to execute and acknowledge to the purchaser a deed referring to the petition, and order of the court, with such other recitals as provided by the preceding section; which deed shall be executed accordingly, and shall have the effect, to all intents and purposes, as if made by the executor or administrator, who made the sale of such real estate.

SEC. 36. Such deed shall convey to the purchaser all the right, title and interest which the deceased had in such real estate, at the

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time of his death, discharged from liability for his debts, and shall be evidence of the facts therein recited.

SEC. 37. If any testator or intestate shall have entered into a contract in writing for the conveyance of any real estate, and shall not have executed the same, in his life time, nor given power by will to execute the same, the other party wishing a specific execution of such contract, may file a petition with the probate court, setting forth the facts, and praying that an order may be made, that the executor or administrator execute such contract specifically, by executing to him a deed for the same.

SEC. 38. Such petitioner shall annex to his petition an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition.

SEC. 39. A notice of such application and a copy of the petition, shall be served on the executor or administrator, twenty days before the first day of the term at which it is to be made.

SEC. 40. If the court, after hearing all parties, believe that specific execution of such contract ought to be made, it shall make an order that the executor or administrator execute such contract specifically, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their disabilities are removed, to appear and file their petition in the district or probate court, to set aside such order for fraud or otherwise.

SEC. 41. When any order for the specific execution of a contract shall be made, the executor or administrator shall execute and deliver to the petitioner a deed, and acknowledge it in open court, conveying the estate according to the order, and expressing therein the saving of the rights above named, according to the order, and the court at which it was made.

SEC. 42. Such a deed shall be as effectual as if it had been made by the deceased.

SEC. 43. The party entitled to such specific performance of a contract, may bring his petition in the district court of the county in the first instance, and if it be brought in the first instance in the probate court, the executor or administrator, or any party thereto, may for good cause have a change of venue to such district court, and when such change is ordered, it shall be the duty of the pro-

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bate judge to cause said cause, with all the original papers pertaining thereto, to be certified and transferred to said district court.

SEC. 44. If any petition be thus filed or certified to by the district court, it shall proceed therein according to law; and if it appear that such specific execution ought to be made, it shall give judgment for the purpose in the same manner, and with the same reservations as above required in cases of orders by the probate court

SEC. 45. If any executor or administrator hold a bond or any other instrument of writing on the testator or intestate, for the conveyance of any real estate, which shall not have been completed within the lifetime of such testator or intestate, nor power by will given to execute the same, the executor or administrator shall proceed against his co-executor or administrator in the same manner as prescribed by this article in other cases, but if there be no co-executor or administrator, he shall file his petition as herein provided, and the court shall appoint some suitable person to appear and manage the defence on the part of those interested, who shall have all the powers, and perform the same duties as are required of executors and administrators in such cases by this article.

SEC. 46. If, upon the settlement of the accounts of any executor or administrator, it appear that the personal estate is not sufficient to satisfy all demands established against such estate, the probate court may make such order as it may think necessary for the sale of all or any part of any gulch or lode claims of gold or silver, or any other metal whatever, owned by such deceased, or in which he may have any interest, according to the rules, laws, or usages of the miners in the district wherein the same is situated, and the same proceedings shall be had in relation thereto, as is provided in this article in relation to the sale of real estate for the payment of debts, upon the petition of the executor or administrator, creditor, or other person interested, and all claims and interest of the deceased in any mining claim or claims, shall for all persons be considered real estate, and all the sections of this article in relation to the sales, conveyance and specific executions of contract, for the sale or conveyance of the same, as well as the duties of the executors and administrators in relation to real estate, shall be applicable to mining claims or interests owned by the deceased therein.

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ARTICLE IV.

Of the Allowances of Demands against Estates.

1. Demands against estates classed.
2. After two years demands barred, saving to persons under disability.
3. Suit pending against deceased at his death; when and how classed as demands.
4. From what time other demands in action shall be considered.
5. Proceedings to establish demands, and from what time legally exhibited.
6. Proceedings without benefit unless demands be presented within two years.
7. Executor or administrator to keep a list of demands exhibited.
8. Demands may be established in a court of record; copy of judgment to be exhibited to county court.
9. Jurisdiction and duty of county courts in allowing demands, and other proceedings against estates.
10. Execution may be issued; when.
11. Executors or administrators may make same defence as his testator or intestate might have made in his lifetime.
12. Court not to allow demand when estate is indebted to claimant unless oath made or affidavit filed; form of affidavit.
13. Court not to allow demand when claimant is indebted to estate without oath or affidavit of claimant; nature of affidavit; demand to be established by testimony.
14. Affidavit or oath may be made by agent in certain cases; by whom not made.
15. Written notice containing copy of the instrument or account sued on to be given.
16. Notice; when, how, and by whom served.
17. Notice may be waived in open court.
18. Court to determine demands in a summary way.
19. Depositions in support of demands; how and when taken.
20. If the claim or set-off do not exceed twenty dollars, and neither party requires a jury, court may determine.
21. If the demand or set-off exceeds twenty dollars, in what manner and by whom determined.
22. If the demand or set-off be not due, the same may be adjusted; how, and by whom.
23. Execution not to issue; when.
24. Proceedings when executor or administrator claims as creditor of the estate.
25. Who shall pay costs on allowance of demands.
26. Clerk to keep an abstract of judgments filed and demands established.
27. Demands to be classed, and satisfied according to classification.
28. Amount and class to be entered on claim and delivered.
29. In what order debts of deceased to be paid.
30. Commencement of suits, &c.
31. Executor or administrator shall appoint an agent to act during temporary absence; proceedings in case of failure.
32. Effect of notice to agent.
33. Proceedings in cases in proper allowance.

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SEC. 1. All demands against the estate of any deceased person shall be divided into the following classes: First, Funeral expenses. Second, Expenses of the last sickness, wages of servants, and demands for medicine and medical attendance during the last sickness of the deceased. Third, Debts due the people of the Territory. Fourth, Judgments rendered against the deceased in his lifetime, and judgments rendered upon attachments levied upon property of the deceased during his lifetime; but if such judgments shall be liens upon the real estate of the deceased, and the estate shall be insolvent, such judgments as are liens upon the real estate shall be paid as provided in the eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first sections of the third article of this act, without reference to the classification except the classes of demands mentioned in the first and second sub-divisions of this section shall have precedence of such judgments. Fifth, All demands, without regard to quality, which shall be legally exhibited against the estate within six months after the granting of the first letters on the estate. Sixth, All demands thus exhibited after the expiration of one year, and within two years after granting of such letters, all demands included in the first, second, third, and fourth classes of this section, which shall not be legally exhibited within one year after the granting of the first letters of administration on the estate, shall be classed as provided by law according to the time at which they are exhibited.

SEC. 2. All demands not thus exhibited within one year shall be forever barred, saving to infants, persons of unsound mind, or imprisoned, and married women, two years after the removal of their disabilities.

SEC. 3. All actions pending against any person at the time of his death, which by law survive against the executor or administrator, shall be considered demands legally exhibited against his estate from the time such action shall be revived and classed accordingly.

SEC. 4. All actions commenced against such executor or administrator, after the death of the deceased, shall be considered demands legally exhibited against such estate from the time of serving the original process on such executor or administrator.

SEC. 5. Any person may exhibit his demand against such es-

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tate by serving upon the executor or administrator a notice, in writing, stating the amount and nature of his claim, with a copy of the instrument or account upon which the claim is founded; and such claim shall be considered legally exhibited from the time of serving such notice.

SEC. 6. No claimant shall avail himself of the benefit of the preceding section unless he shall present his demand to the probate court in the manner provided by law for allowance, within one year after the granting of the first letters on the estate.

SEC. 7. Every executor and administrator shall keep a list of all demands thus exhibited, classing them, and making return thereof to the probate court at each settlement.

SEC. 8. Any person having a demand against an estate may establish the same by the judgment or decree of some court of record, in the ordinary course of proceedings, and exhibit a copy of such judgment or decree, and shall also exhibit copies of all judgments and decrees rendered in the lifetime of the deceased to the probate court.

SEC. 9. The probate court shall have jurisdiction to hear and determine all suits and other proceedings instituted against executors and administrators upon any demand against the estate of the testator or intestate, and of all offsets and other defences allowed by law or equity and set up thereto by the administrator or executor, and shall render judgments, and make such other orders in the premises as shall be just and lawful.

SEC. 10. If such finding shall be against the plaintiff, the court shall have power to issue execution against him in the manner provided by law.

SEC. 11. An executor or administrator shall have power to exhibit the same offset and other defences against any suit or other proceeding instituted against the estate of his testator or intestate which he might have made in his lifetime.

SEC. 12. No probate court shall allow any demand against any estate when the estate is indebted to said claimant after allowing all just credits and offsets, unless the claimant first make oath in open court, or file an affidavit with such claim stating to the best of his knowledge and belief that he has given credit to the estate of all payments and offsets to which it is entitled, and that the balance claimed is justly due.

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SEC. 13. No probate court shall allow any demand against any estate, when the claimant is indebted to said estate after allowing all just credits and off-sets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating, to the best of his knowledge and belief, he has given credit to the estate, of all payments and off-sets to which it is entitled, and that his account or demand, as presented, is correctly stated; and the affidavit in this section and the preceding one, shall not be received as any evidence of the demands, but the same shall be established by competent legal testimony, before it is allowed or adjusted.

SEC. 14. The affidavit on oath required by the two preceding sections, may be made by an agent of the claimant, when such agent has had the management and transaction of the business out of which such demand originated, or when such agent has had the means of knowing personally the facts required to be sworn to, by these sections, and when made by an agent, shall contain a statement of such facts; and executors and administrators shall not be required to make such affidavit, in relation to any demand in favor of the estate, which occurred prior to their letters of administration.

SEC. 15. Any person desiring to establish a demand against an estate shall deliver to the executor or administrator a written notice containing a copy of the instrument of writing or account on which it is founded and stating that he will present the same for allowance at the next term of the probate court.

SEC. 16. Such notice shall be served on the executor or administrator, by delivering him a copy of the same at his usual place of abode, with some white member of his family over the age of fifteen years, ten days before the beginning of such term of court, and may be served by any sheriff or constable, or by any competent witness who shall make affidavit to such service.

SEC. 17. The executor or administrator may appear in court, and waive the service of any such notice.

SEC. 18. The probate court shall hear and determine all demands in a summary way without the form of pleading, and shall take the evidence of competent witnesses, or other legal evidence.

SEC. 19. Any person may take depositions in support of his demand, at his own expense, if he first procured the written consent of the executor or administrator, and such depositions may be taken

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in the ordinary manner, at such time and place as may be agreed upon, and read in evidence in support of such demand.

SEC. 20. If the demand or set-off do not exceed twenty dollars, or if neither party require a jury, the court may decide on the validity of such demand.

SEC. 21. If the demand or set-off exceed twenty dollars, and either party require a jury, a jury shall be immediately summoned, and the trial shall be conducted in a summary manner, without the form of pleading.

SEC. 22. When the demand or set-off is not due at the time of trial, the court may adjust the same, and a judgment may be rendered thereon for the amount, according to the finding of the jury, or judgment of the court, or at the option of the parties, by rebating therefrom, at the rate of ten per cent. per annum, from the time of trial until due.

SEC. 23. In case the parties do not agree to rebate the demand or set-off as provided for in the preceding section, no execution shall issue upon any such judgment, until the demand or set-off upon which the judgment was rendered shall become due and payable.

SEC. 24. Any executor or administrator may establish a demand against the estate of his testator or intestate, by proceeding against his co-executor or co-administrator in the manner prescribed for other persons, but if there be no co-executor or co-administrator, he shall file his claim and other papers, and the court shall appoint some suitable person to appear and manage the defence.

SEC. 25. In all suits and other proceedings in the probate court, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law. In all cases in which costs shall be given against executors and administrators, the estate shall pay the costs.

SEC. 26. The clerk of the probate court, or the judge thereof, shall keep an abstract of all judgments of other courts filed, and of all demands established in the probate court against such estate, which shall show their amount, date and class, and to whom payable.

SEC. 27. If any judgment of a court of record be filed in the probate court, and when demands are allowed against any estate, and the clerk shall make an entry thereof in his abstract, and when

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thus classed, the executor may satisfy such demand according to such classification.

SEC. 28. When any such demand has been allowed, the judge or clerk shall enter thereon the amount allowed, and the class to which it belongs, and deliver the same to the defendant.

SEC. 29. All demands thus allowed against an estate, shall be paid by the executor or administrator, as far as he has assets, in the order in which they are classed; and no demand of one class shall be paid until all previous classes be satisfied, and if there be sufficient to pay the whole of any one class, such demands shall be paid in proportion to their amounts.

SEC. 30. If any person commence a suit of any kind in the district court, against an estate, within one year from the date of administration, he may recover judgment, but shall pay all costs.

SEC. 31. If any executor or administrator shall temporarily absent himself from this Territory, he shall appoint an agent in writing and file such appointment in the office of the court having jurisdiction in his testator or intestate's estate, and notice may be given as is provided in the fifth and fifteenth sections of this article, and upon failure to appoint such agent, such notice may be filed in the office of the court having jurisdiction of the estate.

SEC. 32. Notice given to such agent, or filed as aforesaid among the papers relating to the estate, against which the demand is claimed, shall be as effectual as if it had been given to the executor or administrator.

SEC. 33. If the executor or administrator shall within two months after any demand shall have been allowed, upon notice given as prescribed in the two preceding sections, file in the office of the court having jurisdiction of the estate, the affidavit of himself or some credible person, stating that the affiant has good reason to believe and does believe, that such demand has been improperly allowed, the court shall vacate such order of allowance, and try the matter anew, and allow or reject such demand, as shall be right, and if upon such new hearing such demand shall be allowed, it shall be classed and paid as if such new hearing had not been granted.

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ARTICLE V.

OF THE SETTLEMENT OF THEIR ACCOUNTS.

1. Accounts and settlements made, and how recorded.
2. Annual settlements to be made.
3. Docket to be kept of executors and administrators; date of their letters; term of settlement.
4. List to be put up: where and how.
5. Failure to make settlement; citation to be issued.
6. Citation not served.
7. Proceedings of court after service or publication.
8. Court may revoke letters of delinquent, and attach delinquent to pay costs.
9. Accounts to be settled; what charges, expenses, &c., allowed.
10. Claims for which disbursements have been made must be shown to be just; proof of.
11. Expenses to be paid, and balance on hand to be apportioned among creditors.
12. On every settlement, how to proceed till debts are all paid.
13. Executions for demands allowed against estates; when and against whom issued.
14. Execution not satisfied, *scire facias* may issue against securities.
15. *Scire facias* returned served; proceedings thereon.
16. Notice of final settlement; when and how given.
17. Final settlement; how to be conducted.
18. On final settlement, what debts charged in inventory as due the estate to be credited.

SEC. 1. The judge or clerk of each court shall provide well bound books, and enter therein the accounts and settlements of all executors and administrators made in the court, in such manner as to form a complete record of all such accounts settled in that court.

SEC. 2. Every executor or administrator shall exhibit a statement of the accounts of his administration for settlement, with proper vouchers, to the probate court at the first term after the end of one year from the date of his letters, and at the corresponding term of such court every six months thereafter until the administration be completed.

SEC. 3. The judge or clerk of the probate court shall keep a docket and enter therein a list of all executors or administrators who have not made final settlement of their accounts, the date of their letters, and the term at which they are required to make settlement.

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SEC. 4. The clerk or judge of said court shall put up in some conspicuous place in his office, thirty days before each term, a list of executors and administrators whose settlements are required to be made at the term.

SEC. 5. If any executor or administrator fail to present such settlement, the judge or clerk shall immediately issue a citation to any county in the Territory, requiring him to present his accounts for settlement at the next term of the probate court, and to show cause why an attachment should not be issued against him for not exhibiting his accounts at the term at which he was required to settle.

SEC. 6. If such citation be not served, the judge shall order an *aliis* citation, which may be served, or may be published in some newspaper in this Territory, one month before the return thereof, in case the defendant cannot be found.

SEC. 7. If after such service or publication no cause to the contrary be shown, such executor or administrator may be fined by the probate court not exceeding two thousand dollars, to the use of the county, or may at the option of said judge, in lieu of such fine, be imprisoned in the common jail of the county until he render a full, true and perfect statement of the same; and such executor or administrator, and his securities, shall be liable upon his official bond for all loss and damages any person interested may sustain by reason of his failure to settle.

SEC. 8. The probate court may revoke the letters of such delinquent, and shall at all times have power to issue attachments and all other processes to compel such settlement, which may be directed to, and executed in any county in this Territory, and in all cases such delinquent shall pay all costs attending the same.

SEC. 9. In all settlements of executors and administrators. the probate court shall settle the same according to law, allow all disbursements and appropriations made by order of the court, and all reasonable charges for funeral expenses, leasing real estate, legal advice and services, and for collecting and preserving the estate, and as full compensation for other services and trouble a commission on personal estate, and on the money arising from the sale of real estate, as follows: First, Upon all sums not exceeding two thousand dollars, eight per centum. Second, Upon all additional sums above two thousand dollars, five per centum.

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SEC. 10. Upon every settlement the executor or administrator shall show that every claim for which disbursements have been made has been allowed by the court according to law, or shall produce such proof of the demand as would enable the claimant to recover in a suit of law.

SEC. 11. At every settlement the court shall ascertain the amount of money of the estate which has come to the hands of such executor or administrator from all sources, and the amount of debts against the estate, and if their be not sufficient to pay the whole of the debts and expenses of administration, the money remaining after paying the expenses of administration shall be apportioned among the creditors according to this act; and the court shall order such executor or administrator to pay the claims allowed by the court, according to such apportionment, reserving apportionments made on claims which remain undecided until decision be had thereon.

SEC. 12. The probate court, upon every settlement, shall proceed in like manner till all the debts be paid or the assets exhausted; and if upon such settlement there shall be money enough to satisfy all demands of any one class legally exhibited against such estate, the court shall order the whole to be paid.

SEC. 13. If any executor or administrator fail to pay any claim thus ordered to be paid, according to the preceding section, when demanded, the judge or clerk of the probate court, on application of such creditor, and being satisfied that such demand has been made, shall issue execution for the amount ordered to be paid, and cost, against the property, goods, and chattels, and real estate of such executor or administrator; and if upon the return of said execution it be not satisfied, for want of property whereon to lay the same, the court, upon the complaint of any such creditor, may attach the said executor or administrator, have him arrested and brought before said court to answer under oath as to his property or effects; upon such answer the court may take testimony, and if from the same it be satisfied that the executor or administrator has money or property in his possession secreted, or otherwise disposed of so as to prevent the collection of the same on said execution, it may imprison said administrator or executor in the common jail of the county until such money, property, or effects is produced.

SEC. 14 If any such execution be returned unsatisfied, the

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creditor may sue out of the probate court a *scire facias* against any one or more of the securities of such executor or administrator, referring to the bond, the order of payment, the execution, and return, and requiring such security to show cause why judgment should not be rendered against them for the amount ordered to be paid and still unsatisfied.

SEC. 15. Such *scire facias* may be directed to and served in any county in this Territory, and if on the return thereof good cause to the contrary be not shown, the court shall render judgment against such security or securities for the amount unpaid, and all costs, and award execution therefor.

SEC. 16. If any executor or administrator wishes to make final settlement, he shall publish for four weeks in some newspaper in this Territory a notice to creditors and others interested in the estate, that he intends to make final settlement at the next term of court.

SEC. 17. If it appear to the court that such notice was duly published, and that the estate of the deceased has been fully administered, the court shall make final settlement, which shall be conducted as annual settlements.

SEC. 18. At his final settlement the court shall give credit to the executor or administrator for all debts which have been charged in the inventory as due to the estate, if the court be satisfied that such debt was not really due to the estate, or it had been balanced or reduced by offsets in any court of competent jurisdiction, or the debtor was insolvent, or that from any other cause it was impossible for the executor or administrator to have collected such claim by the exercise of due diligence.

ARTICLE VI.

OF THE DISTRIBUTION OF ESTATES.

SEC. 1. Executors and administrators shall not be compelled to make distribution or pay legacies until one year after the date of the letters unless ordered by the court so to do, until bond and security be given by the legatee or distributee to refund his due proportion of any debt which may afterwards be established against the estate, and the costs attending the recovery thereof; but the

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widow shall not be required to give bond before she receive the property to which she may be entitled under this act.

SEC. 2. If upon any settlement it appear that there is sufficient money to satisfy all the demands against the estate, the court shall then order the payment of legacies and distribution of shares, as in the case of debts, except that specific legacies shall be first satisfied.

SEC. 3 If personal property descend, and an equal division thereof cannot be made in kind, the court being first satisfied that all the debts and legacies are paid, may order a sale of such personal property, describing the time, place, and terms of sale, and cause the money arising therefrom to be distributed according to the rights of those entitled to distribution.

SEC. 4. If such property may be divided in kind, the probate court may order partition thereof among the parties entitled; and for that purpose the court shall appoint three commissioners, disinterested. and of no kin to the parties, whose duty it shall be, after first making affidavit that they will honestly and impartially discharge the trust reposed in them, to make partition as equal in kind as the value and nature of the property will admit, and report their proceedings to the court at the next term thereof, which report shall be approved by the court unless sufficient objections are shown for its rejection; and if rejected, the court shall appoint other commissioners, as often as may be necessary, until a report shall be made that will meet the approval of the court; and all such subsequent commissioners shall make affidavit, and proceed in all respects as provided by law.

SEC. 5. Each person entitled to distribution or partition not applying therefor, shall be notified in writing of such application ten days before any such order shall be made; or if such person does not reside in this Territory, a notice of application shall be published in some newspaper in this Territory eight weeks before any such order shall be made.

SEC 6 When any order for the partition or sale of personal property shall be made by the court, it shall settle the claims of the distributees; and in case of the sale of such property, the person selling the same shall be ordered to distribute the money arising therefrom, according to the rights of each distributee

SEC. 7. If any distributee become a purchaser of such prop-

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erty, his receipt for the amount of his share shall be received in payment of an equal amount of the purchase money, and the court shall allow the amount of such receipt as so much distributed under the order of the court.

SEC. 8. If real estate be sold for the payment of debts in lieu of personal estate, under this act, the court in making distribution of the personal estate reserved, shall cause the same to be appraised by three disinterested persons, sworn for that purpose, and shall allow to the widow only such amount as she would have been entitled to had the amount of debts paid by money made by the sale of real estate been paid out of the personal estate.

SEC. 9. When an order shall be made by the probate court upon any executor or administrator to pay over money to the widow, heirs, legatees, or distributee of any estate, and he fails to make such payment, the same proceedings may be had against him and his securities to compel such payment as are authorized in case where an executor or administrator fails when ordered to pay demands allowed against an estate.

SEC. 10. If after the payment of legacies or distributions it become necessary that the same, or any part thereof, be refunded for the payment of debts, the court, on application, shall apportion the same among the legatees or distributees according to the amount received by them, except that specific legacies shall not be required to refund unless the residue be not sufficient to satisfy such debts.

SEC. 11. If any legatee or distributee fail to refund according to such order, on motion of the executor or administrator, the court shall (ten days notice in writing having been given to the legatee or distributee) enter judgment for the amount apportioned to him.

SEC. 12. The probate court, as occasion may require, may order such appropriation for the support and education of each minor child of the deceased, not otherwise provided for, as will not prejudice the rights of creditors; and the creditors shall allow such appropriations as so much distributed to such minor child.

SEC. 13. Until the widow's dower be assigned, the court shall order such sums to be paid to her out of the rent of the real estate as shall be in proportion to her interest in such real estate.

SEC. 14. If upon the return of the inventory and appraisement it appear to the court that the whole amount of the estate is not more than that which the widow is entitled to by law, without

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being subject to the payment of debts, and that there are no debts due the estate, or so small that they would not defray the expenses of collection and of administration, the court may in its discretion make an order that such estate be delivered to the widow, and that all further advertisements, settlements, and other proceedings under said administration be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with.

SEC. 15. If it appear upon final settlement that the legatee or distributee is a non-resident of this Territory, or from any other cause is not in a situation to receive his share, and give a discharge therefor, or do not appear by himself or authorized agent to receive the same, the probate court shall order the executor or administrator to lend out the money on good security for such limited time as the court may direct, not exceeding one year.

SEC. 16. In all cases where the legatee or distributee shall not appear within one year after final settlement by the executor or administrator, and claim his or her share, the probate court shall order the same to be paid into the treasury of the Territory.

SEC. 17. When any share shall be paid into the Territorial treasury, the executor or administrator shall take from the treasurer duplicate receipts, one of which he shall file in the office of the auditor, who shall charge the treasurer with the amount, and the other in the office of the probate court ordering the share to be paid into the treasury, and the court shall credit the executor or administrator therewith.

SEC. 18. When the legatee or distributee shall appear at any time and claim any share paid into the treasury, the court before whom final settlement was made, being first satisfied of his rights and identity, shall grant him a certificate under its seal, and on presentation of the certificate to the auditor, he shall draw his warrant in favor of such person on the treasurer for the amount.

SEC. 19. If after the expiration of one year after final settlement, there remain in the hands of the administrator personal property of any kind unclaimed by the legatee or distributee, the court shall order the same to be sold, and the proceeds paid into the treasury, and the same may be drawn therefrom in the manner provided in the preceding section.

SEC. 20. If upon the final settlement of any executor or administrator it shall appear to the court that there are lands or tene-

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ments (or mining claims, which for the purpose of this act shall be considered real estate) belonging to or comprising a part of the estate of the deceased, the said court shall make an order commanding the sheriff of the proper county to advertise and sell the same at public vendue, to the highest bidder, for cash in hand, the said property, upon the same notice, and in the same manner as is prescribed for the sale of real estate under executors, and that the net proceeds of said sale shall be deposited in the Territorial treasury by the judge of the probate court, subject to the same regulations concerning the heirs or legatees as is provided in section eighteen of this article.

Of Estates of Non-Residents.

Sec. 21. Where administration shall be taken in this Territory on the estate of any person who at the time of his decease was an inhabitant of any other state or country, his real estate and mining claims found here after the payment of his debts, shall be disposed of according to his last will, if he left any, duly executed, according to the laws of this Territory, and the personal estate according to his last will and testament, duly executed, according to the laws of his domicil; and if there should be no such will, his real estate and mining claims, or mines, shall descend according to the laws of this Territory. and his personal estate shall be distributed according to the laws of the state or country of which he was an inhabitant.

Sec. 22 Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this Territory, the residue of the personal estate, if any, may be distributed and disposed of in the manner aforesaid, by the probate court in which the estate is settled.

Sec. 23. If such deceased person die insolvent, his estate found in this Territory shall, as far as practicable, be so disposed of that all his creditors whose accounts have been allowed shall receive a *pro rata* amount upon their respective allowances.

Sec. 24. When any order shall be made by the probate court directing the sale of any personal property for distribution, as provided by this act, it shall be the duty of the executor or administrator of the estate to which such personal property belongs to sell

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the same, and distribute the proceeds of such sale according to the order of the court; and he and his securities shall account on his official bond for any failure to apply the proceeds of such sale according to such order.

SEC. 25. Whenever application shall be made as provided in the third, fourth, and fifth sections of this article, for the distribution of personal property, and it shall appear to the court, by the affidavit of the applicant or other person interested, that there is an infant or infants interested in such property, who are not residents of the county, and who have no legal appointed guardian or curator, it shall be the duty of the court to appoint a guardian *ad litem* for such infant or infants.

SEC. 26. Such guardian, when so appointed, shall have power as other guardians, and shall be required to enter into bond with like effect and on the same conditions as therein provided.

SEC. 27. The guardian *ad litem* appointed under the provisions of this act shall receive the money or property which may be distributed or set apart to his ward, and shall hold and manage the same in like manner and on like conditions as general guardians and curators, and shall in all things be governed by the same rules as far as the same may be applicable.

SEC. 28. If at any time the court shall be satisfied, as provided in the act concerning guardians and curators, that any minor has another curator in any county in this Territory, where such minor resides, the court may order the transfer of all moneys, property, and effects to such regular curator, with like effect and on the same conditions as provided in such act.

ARTICLE VII.

PROCEEDINGS AGAINST EXECUTORS OR ADMINISTRATORS AND THEIR SECURITIES.

SEC. 1. If upon the final settlement of any executor or administrator there be not sufficient assets to pay all the demands against the estate, any creditor may at any time before the end of the succeeding term of the court after which such final settlement shall have been made, suggest to the court that such executor or administrator has not made just accounts of the assets in his hands, and apply for an inquiry into the same.

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SEC. 2. The executor or administrator shall be served with a notice of such application, setting forth the substance thereof, ten days before the same shall be made to the court; and such notice may be served by any sheriff or constable, or any competent witness, who shall make affidavit to such service by delivering to such executor or administrator a copy of such notice, or by leaving a copy of the same at his usual place of abode, with some white member of his family over the age of fifteen years.

SEC 3 Upon such application the court shall direct an issne to be made up whether there be waste or not, which shall be tried as demands against the estate.

SEC. 4. If no waste be found, the applicant shall pay the costs, but if waste be found, judgment shall be rendered in favor of the applicant against such executor or administrator of his own proper estate for the amount wasted, and costs, and the money collected shall be applied to the payment of the debts due the applicant, and the residue shall be apportioned among the creditors.

SEC 5. If it appear that such waste was committed wilfully and fraudulently, the court shall render judgment for double the amount wasted, with costs, to be apportioned as aforesaid.

SEC. 6. If after final settlement of any estate found to be solvent, any creditor or other person interested therein may bring action of waste, or a suit on the administrator's bond, and assign and prove a breach of the condition, any waste or mismanagement of the estate, and have judgment against the administrator or executor as his or their securities in said bond, for the whole value of the assets wasted or mismanaged, as he could have done it if the whole had been regularly accounted for, with costs.

SEC. 7. Upon such judgment execution may issue against the private estate of the executor or administrator and his or their securities, and the settlement of such executor or administrator shall only be conclusive so far as he has applied the assets, pursuant to the orders and apportionment made by the court for the payment of debts.

SEC 8. The proceeds of all executions on any judgment thus recovered shall be applied to the payment of the debts due to the person suing, and the residue shall be apportioned among the creditors.

SEC. 9. The bond of any executor or administrator may be

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sued on the instance of any person injured, in the name of the people of the Territory of Montana, to the use of such party, for the waste or mismanagement of the estate, or other breach of the condition of such bond, and the damages shall be assessed thereon as on bonds of collateral conditions.

SEC. 10. When any such executor or administrator shall have wasted or misapplied any gold dust received in his hands by virtue of his trust or office of executor or administrator, in all such cases the value of such gold dust in the United States treasury notes shall be the measure of damages.

SEC 11. The probate court, for disobedience of any order made in pursuance of this act, may issue attachments, imprison the body, or proceed by sequestration of lands and goods, and may issue all necessary and proper process for that purpose, directed to any county in the Territory, and cause it to be served and executed therein.

ARTICLE VIII.

OF APPEALS.

SEC. 1. Appeals shall be allowed from the decisions of the probate court to the district court in the following cases: First, On all demands against the estate Second, On all settlements of executors and administrators. Third, On all apportionments among creditors, legatees, or distributees. Fourth, On all orders directing the payment of legacies, making distribution, or making allowances to the widow or minor children. Fifth, On all orders for the sale of personal estate because distribution cannot be made in kind. Sixth, On all orders for the sale of real estate. Seventh, On all judgments for waste. Eighth, On proceedings to recover balances escheated to the people. Ninth, On all orders revoking or granting letters testamentary or of administration. Tenth, On all orders making allowances for the expenses of administration. Eleventh, On all orders for the specific executions of contracts. Twelfth, On all orders compelling legatees and distributees to refund; and in all other cases where there shall be a final decision of any matter arising under the provisions of this act.

SEC. 2. All appeals shall be taken during the term of which the decision complained of is made.

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SEC. 3. The applicant for such appeal, his agent or attorney, shall file an affidavit that the appeal is not made for the mere purpose of vexation or delay, but because the affiant believes that the appellant is agrieved by the decision of the court.

SEC. 4. Every such appellant shall file in the court the bond of himself or some other person, in a sum, and with security to be approved by the court, conditioned that he will prosecute the appeal with diligence, and pay the debt, damages, and costs that may be adjudged against him. This act shall not be so construed as to require an executor or administrator to enter into bond in order to entitle him to an appeal.

SEC. 5. After such affidavit and bond have been filed, the appeal shall be granted, but shall be a *supersedeas* in any other matter relating to the administration of the estate except that from which the appeal is specially taken.

SEC. 6. When such appeal is taken, the clerk or judge shall transmit to the clerk of the district court a certified transcript of the record and proceedings relating to the cause, together with the original papers in his office relating thereto.

SEC. 7. Upon the filing of such transcript and papers in the office of the clerk of the district court, ten days before the first day of the term thereof, the said district court shall proceed to hear and determine the same anew, without regarding any error, defect, or other imperfection in the proceedings of the probate court.

SEC. 8. After the said district court shall hear and determine the same, the clerk thereof shall certify a transcript of the record of the judgment and proceedings of said district court, together with the original papers, to the court whence the appeal was taken, who shall proceed according to decision of the said district court.

SEC. 9. All surviving partners who undertake the management of partnership estates, as provided by this act, and their sureties, shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions, and proceedings as are enjoined upon, or authorized against executors and administrators and their securities by this act, so far as the same may be applicable.

SEC. 10. All courts in this Territory having probate jurisdiction, and the clerk thereof, shall be governed in all things by the provisions of this act as far as they may be applicable to their jurisdiction and duties.

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ARTICLE IX.

Of Public Administrators.

Sec. 1. Each probate court, or court having probate jurisdiction in any county, may appoint a public administrator for its county, who shall hold his office for two years, and until his successor in office be qualified.

Sec. 2. Before entering on the duties of his office he shall take oath faithfully and honestly to discharge the duties thereof, and shall enter into bond to the people of the Territory of Montana, in a sum not less than ten thousand dollars, with two or more securities approved by said court, conditioned that he will faithfully discharge all the duties of his office, and the court may from time to time, as occasion shall require, demand additional security of such administrator, and in default of giving the same within twenty days after required, may remove said administrator and appoint another.

Sec. 3. His certificate of appointment, official oath, and bond, shall be filed and recorded in the recorder's office of the county, also in the office of the probate court, and copies thereof from either, certified under the seal of such court, or from the recorder's office under his seal, shall be evidence.

Sec. 4. Any person injured by the breach of such bond may sue upon the same, in the name of the people of the Territory of Montana, for his own use in any court having jurisdiction.

Sec. 5. Such public administrator may be removed from office in the same manner and for the same causes as administrators in other cases.

Sec. 6. He shall receive the same compensation for his services as may be allowed by law to executors and administrators, unless the court for special reasons allow a higher compensation.

Sec. 7. For any wilful misdemeanor in office he may be indicted, and fined not exceeding one thousand dollars, and may be imprisoned until such fine and costs are paid.

Sec. 8. It shall be the duty of the public administrator to take into his charge and custody the estates of all the deceased persons in his county in the following cases: First, When a stranger dies intestate in the county, without relations or confidential friends, or

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dies leaving a will, and the executor named is absent or fails to qualify. Second, When persons die intestate, without any known heirs, and administration is not undertaken by some other person. Third, When persons unknown die, or are found dead in the county. Fourth, When money, property, papers, or other estate, are left in a situation exposed to loss or damage and no other person administers on the same. Fifth, When any estate of any person who has died elsewhere is left in the county, liable to be injured, wasted, or lost, or is not in the lawful custody of some responsible person. Sixth, When from any other good cause the probate court shall order him to take possession of any estate to prevent its being injured, wasted, purloined, or lost.

SEC. 9. In addition to the provisions of this article, he and his securities shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions and proceedings as are enjoined upon authorized agents, executors and administrators by this act, so far as the same may be applicable.

SEC. 10. He shall have power to administer oaths and affirmations in all matters relating or belonging to the exercise of his office; and he shall be allowed the same fees that justices of the peace are allowed for like duties.

SEC. 11. If at any time letters testamentary or of administration be legally granted on such estate to any other person, he shall, under the order of the probate court, account for, pay, and deliver to the executor or administrator thus appointed all money, property, papers, and estate of every kind in his possession.

SEC. 12. It shall be the duty of all civil officers to inform the public administrator of all property and estate known to them which is liable to loss, waste, or injury, and which by law ought to be in the possession of the public administrator.

SEC. 13. The public administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers, or other estate of the person deceased

SEC. 14. If any person file an affidavit before a justice of the peace that he has reason to believe that any other person is unlawfully possessed of property (describing the same in such affidavit as truly as may be) which ought to be committed to the care of the public administrator, he shall issue his warrant to bring such person before him forthwith.

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SEC. 15. When such person shall be brought before the justice, the matter shall be tried in a summary way; and if the complaint be found true, the justice shall render judgment that the property be delivered to the public administrator to be administered, and for cost.

SEC. 16. Such judgment may be enforced by execution or attachment.

SEC. 17. If such judgment be against the right of the public administrator to such property, the affiant shall pay the costs, but such judgment shall be no bar to the administrator's right to sue in the ordinary form in the proper court for the recovery thereof.

SEC. 18. If the judgment of the justice be against the person charged with the possession of such property, he shall be allowed an appeal to the probate court on the same terms and with like effect as in appeals from judgments in justices' courts.

SEC. 19. The recognizance to be entered into by the appellant and his securities may be in the following form:

We, the undersigned, —— ——, as principal, and —— —— —— ——, as securities, acknowledge ourselves indebted to —— ——, public administrator for ——— county, in the sum of ——— dollars, to be void upon this condition: whereas, —— —— has appealed from the judgment of —— ——, a justice of the peace, in a proceeding between —— ——, affiant, and —— ——, defendant; now if on such appeal the judgment of the justice be affirmed, or on a trial anew in the probate court judgment be given against the appellant, and he shall satisfy and perform the judgment of the justice, and pay the cost of the appeal, then this recognizance shall be void, otherwise to remain in full force; which shall be signed by the appellant and his securities, and attested by the justice.

SEC. 20. When an appeal is allowed the same proceedings shall be had, and the duty of the justice shall be the same as in appeals from judgments in justices' courts

SEC. 21. If the person against whom the judgment is rendered cannot be found, or the judgment be not complied with, the justice may issue his warrant to seize the property or estate and deliver it to the public administrator.

SEC. 22. The probate court may at any time order the public administrator to account for and deliver all money and property of

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an estate in his hands to the heirs, or to any executor or administrator regularly appointed.

SEC. 25. This act shall take effect from and after its passage.

AN ACT to designate the style of the enacting clause of the legislative acts of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That all acts of the Legislative Assembly of the Territory of Montana shall be designated, known, and acknowledged in each such act of said Legislative Assembly as follows:

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 2. This act shall be in force from and after its passage.

[Approved December 20, 1864.]

AN ACT to prevent ranchmen and stable keepers from using stock left with them without the consent of the owners.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That if any person keeping a public ranch or stable shall use, or allow to be used, without the consent of the owner, any horse, ox, mule, or ass, that may have been left with him to be ranched or fed, he shall forfeit to the owner all ranch or stable fees that may be due upon such animal used, and the additional sum of twenty-five dollars for each day such animal may have been used, to be collected in the same manner as other debts.

SEC. 2. This act shall take effect and be in force from and after its passage.

[Approved December 23, 1864.]

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AN ACT to regulate the sale of horses, mules, asses, jennies, and cattle at auction in Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Any person who may be licensed in this Territory to keep an auction where horses, mules, asses, jennies, and cattle are sold at auction, shall open a book called a Stock Register, in which he shall describe minutely every animal he shall offer for sale, and before proceeding to sell the same.

SEC. 2. In such register shall be recorded the person's name who brings forward such animal for sale, and whether or not he is the owner of the same, and if not the owner, the name of the owner, with his residence; also the color, brand or mark, size, and age, as near as may be, of the animal so offered for sale.

SEC. 3. The keeper of such auction shall be entitled to charge and receive for the registering each animal so entered in his register before he shall offer the same for sale, the sum of twenty-five cents; and all "stock registers" shall be open for inspection and reference to any person who may wish to examine the same, and shall be evidence in any court where the trial of the rights of property may be had.

SEC. 4. Any person who shall, after the passage of this act, offer for sale at auction any animal named in section one of this act, without first having complied with the requirements of this act, shall, upon conviction thereof before any court of proper jurisdiction, be fined in the sum of fifty dollars, to be collected as other fines, and paid into the county treasury for the use of the county.

SEC. 5. This act to take effect and be in force in thirty days from and after its passage.

[Approved December 26, 1864.]

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AN ACT relating to the discovery of gold and silver quartz leads, lodes, or ledges, and of the manner of their location.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That any person or persons who may hereafter discover any quartz lead, lode or ledge shall be entitled to one claim thereon by right of discovery, and one claim each by pre-emption.

SEC. 2. That in order to entitle any person or persons to record in the county recorder's office of the proper county any lead, lode, or ledge, either of gold or silver, or claim thereon, there shall first be discovered on said lode, lead, or ledge a vein or crevice of quartz or ore with at least one well defined wall.

SEC. 3. Claims on any lead, lode, or ledge, either of gold or silver, hereafter discovered, shall consist of not more than two hundred feet along the lead, lode, or ledge, together with all dips, spurs, and angles emanating or diverging from said lead, lode, or ledge, as also fifty feet on each side of said lead, lode, or ledge for working purposes. *Provided*, That when two or more leads, lodes, or ledges shall be discovered within one hundred feet of each other, either running parallel or crossing each other, the ground between such leads, lodes, or ledges shall belong equally to the claimants of the said leads, lodes, or ledges, without regard to priority of discovery or pre-emption.

SEC. 4. When any leads, lodes, or ledges shall cross each other, the quartz ore or mineral in the crevice or vein at the place of crossing shall belong to and be the property of the claimants upon the lead, lode, or ledge first discovered.

SEC. 5. That before any record shall be made under the provisions of this act, there shall be placed at each extremity of the discovered claim a good and substantial stake, not less than five inches in diameter, said stake to be firmly planted or sunken in the ground, extending two feet above the ground, that upon each stake there shall be placed in legible characters the name of the lead, lode, or ledge, and that of the discoverer or discoverers, the date of discovery, and the name of each pre-emptor or claimant, and the

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direction or bearing, as near as may be, of his or her claim, said stake and the inscriptions thereon to be replaced at least once in twelve months by the claimants on said leads, lodes, or ledges, if torn down or otherwise destroyed.

SEC. 6. Notice of the discovery or pre-emption upon any lead, lode, or ledge shall be filed for record in the county recorder's office of the county in which the same may be situated within fifteen days of the date of the discovery or pre-emption, and there shall at the same time be an oath taken before the recorder that the claimant or claimants are each and all of them *bona fide* residents of the Territory of Montana; and there shall be deposited in the recorder's office, either by the discoverer or some pre-emptor, a specimen of the quartz ore or mineral extracted or taken from said lead, lode, or ledge, which said specimen shall be properly labelled by the recorder, and preserved in his office.

SEC. 7. That any person or persons who shall take up or destroy, or cause the same to be done, any of the said stakes, or who shall in any wise purposely deface or obliterate any part or portion of the writing or inscription placed thereon, shall be deemed guilty of a misdemeanor, and upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine of not more than one thousand dollars, or imprisoned in the county jail not more than ninety days, or by both such fine and imprisonment.

SEC. 8. That the amount of ground which may be taken up upon any lead, lode, or ledge, in addition to the discovery claim, shall be limited to ten hundred feet along said lead, lode, or ledge, in each direction from the discovery claim thereon.

SEC. 9. All lead, lode, or ledge claims taken up and recorded in pursuance with the provisions of this act, shall entitle the person recording to hold the same to the use of himself, his heirs and assigns; and conveyances of quartz claims shall hereafter require the same formalities, and shall be subject to the same rules of construction, as the transfer and conveyance of real estate.

SEC. 10. That if at any time previous to the passage of this act claims have been taken up and recorded in the recorder's office of the proper county, upon any actual or proper lead, lode, or ledge of quartz ore or mineral, the owners or proper claimant or claimants of said respective claims shall hold the same to the use of themselves, their heirs and assigns.

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SEC. 11. That the act relating to the discovery of gold and silver quartz lodes, and the manner of their location, passed by the Idaho legislature, and approved February 4, 1864, and all other acts, or parts of acts, inconsistent with this act, be, and the same are hereby repealed.

SEC. 12. That this act shall take effect from and after its passage.

[Approved December 26, 1864.]

AN ACT fixing the age of majority.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC 1. That all male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be to all intents and purposes held and considered to be of lawful age.

SEC. 2. This act shall take effect and be in force from and after its approval by the governor.

[Approved December 26, 1864.]

AN ACT to provide for the expenses of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the auditor of the Territory is hereby empowered to issue territorial warrants, drawn upon the treasury of the Territory in favor of all persons to whom the legislative assembly of the Territory may direct.

SEC. 2. That the treasurer shall pay out of any funds in his hands applicable to such use, the amount stated as due in the auditor's warrants only, in the order in which they are drawn, accord-

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ing to priority of date. *Provided*, That all warrants are receivable into the treasury in payment of any taxes, licenses, or other dues due the Territory, and all warrants bearing date the same day bear equal priority, and shall be paid in the order in which they are presented for payment.

SEC. 3. The auditor shall issue his warrants on the treasurer in any sum that the party entitled to the same may desire: *Provided*, They shall not be less than five dollars unless the sum due is less than that amount.

SEC. 4. That all warrants drawn by the auditor on the treasury of the Territory shall be in the following form:

MONTANA TERRITORY, ———, No. ——

Treasurer of the Territory of Montana, pay to —— ——, or order. ——— dollars out of any money in the treasury not otherwise appropriated, and charge the same to —— ——, and this shall be your voucher.

Issued ———, 18—. Signed, —— ——,
Auditor of Montana Territory.

SEC. 5. That the warrants drawn by the auditor of this Territory on the treasurer shall be received by the sheriff or collector of the revenue in payment of taxes, fines, and penalties, or other dues to the Territory, at par, and shall be received from such officer by the treasurer in settlement of revenue due from such sheriff or collector of the Territory.

SEC. 6. No sheriff or collector of the revenue shall buy, purchase, trade for, or in any manner deal in the warrants drawn by the auditor except at their par value; and for every offence committed against the provisions of this act shall be fined in any sum not exceeding five hundred dollars.

SEC. 7. That each year the auditor shall make an estimate of the probable amount of revenue derivable from the various sources, and report the same to the legislative assembly of the Territory, by which they may be governed in their appropriations, and that every warrant shall be cancelled or paid in its own fiscal year out of the sums in the hands of the treasurer, and that no warrants shall be issued over and above the estimate of said auditor, duly reported to the legislative assembly.

SEC. 8. That all territorial warrants issued by the proper au-

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thorities of the Territory shall draw interest at the rate of ten per cent. per annum from and after the date of their presentation, until there are funds to pay said warrants in the hands of the treasurer.

SEC. 9. That the time intervening between the passage of this act and the first day of January, one thousand eight hundred and sixty-five, or the commencement of the first fiscal year, shall, for the purposes of this act, be considered part of the fiscal year of eighteen hundred and sixty-five.

SEC. 10. This act to take from and after its passage.

[Approved December 26, 1864.]

AN ACT to create a lien in favor of ranchmen and others.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That any ranchman, farmer, agistor or herder of cattle, tavern-keeper, or livery stable keeper, to whom any horses, mules, asses, cattle, or sheep shall be entrusted, and a contract for their keeping be entered into between the parties for the purpose of feeding, herding, pasturing, or ranching, shall have a lien upon said horses, mules, asses, cattle, or sheep for the amount that may be due for such feeding, herding, pasturing, or ranching, and shall be authorized to retain possession of such horses, mules, asses, cattle, or sheep until the said amount is paid. *Provided*, That the provisions of this act shall not be construed to apply to stolen stock.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved December 28, 1864.]

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AN ACT securing liens to mechanics and others.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Every mechanic, builder, artisan, workman, laborer, or other person, who shall do or perform any work or labor upon, or furnish any materials, machinery, or fixtures, for any building, erection, or other improvement upon land, or for repairing the same, under or by virtue of any contract with the owner or proprietor thereof, or his agent, trustee, contractor, or sub-contractor, upon complying with the provisions of this act, shall have for his work or labor done, or materials, machinery, or fixtures furnished, a lien upon such building, erection, or other improvement, and upon the lot or lands belonging to such owner or proprietor on which the same is situated, to the extent of one acre, if outside of any town or incorporated city, or if within any town or incorporated city, then to the extent of the whole lot or lots on which the same is situated, to secure the payment of such work or labor done, or materials, machinery, or fixtures furnished.

SEC. 2. Every sub-contractor wishing to avail himself of the benefits of this act, shall give notice to the owner or proprietor, or his agent or trustee, before or at the time he furnishes any of the things aforesaid, or performs any of the labor, of his intention to furnish or perform the same, and the probable value thereof; and if afterwards the things are furnished or labor done, the sub-contractor shall settle with the contractor therefor, and having made the settlement in writing, the same signed by the contractor, and certified by him to be just, shall be presented to the owner or proprietor, or his agent or trustee, and left with him; and within thirty days from the time the things shall have been furnished or the labor performed the sub-contractor shall file with the recorder of the county in which the building, erection, or other improvement is situated, a copy of the settlement between himself and the contractor, which shall be a lien on the building, erection, or improvement for which the things were furnished, or on which the labor was performed, and shall at the time file a correct description

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of the property to be charged with the lien; the correctness of all which shall be verified by affidavit.

SEC. 3. In case the contractor shall for any reason fail or refuse to make and sign such settlement in writing with the sub-contractor when the same is demanded, then the sub-contractor shall make a just and true statement of work and labor done, or things furnished by him, giving all credits, which he shall present to the owner or proprietor, or his agent or trustee, and shall also, within said thirty days, file a copy of the same, verified by affidavit, with the recorder of the county in which the building, erection, or other improvement is situated, together with a full and correct description of the property to be charged with the lien.

SEC. 4. The certificate of settlement made as aforesaid, or statement of the sub-contractor, shall be a justification to the employer in withholding from the contractor the amount appearing thereby to be due to the sub-contractor until he is satisfied that the same has been paid; and the employer shall become surety of the contractor to the sub-contractor for the amount due for such work and labor, or things, not, however, exceeding the value thereof, as notified under section second.

SEC. 5. The notice mentioned in the preceding sections may be served by the sheriff, or any constable of the county in which such building, erection, or other improvement is situated, and the return thereon of such sheriff or constable shall be received in evidence without further proof.

SEC 6. It shall be the duty of every person, except as has been provided for sub-contractors, who wishes to avail himself of the benefits of this act, to file with the recorder of the county in which the building, erection, or other improvement to be charged with the lien is situated, and within sixty days after all the things aforesaid shall have been furnished, or the work or labor done or performed, a just and true account of the demand due or owing to him, after allowing all credits, and containing a correct description of the property to be charged with said lien, and verified by affidavit.

SEC. 7. It shall be the duty of the recorder of the county to endorse upon every account the date of its filing, and make an abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of its filing, the name of the person laying or imposing the lien, the amount of such lien, the

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name of the person against whose property the lien is filed, and the description of the property to be charged with the same, for all of which he shall receive the sum of two dollars from the person laying or imposing the lien, which shall be taxed and collected as other costs in case there be suit thereon.

SEC. 8. The liens for work or labor done, or things furnished, as specified in this act, shall have priority in the order of filing the accounts thereof, as aforesaid, and shall be preferred to all other liens and incumbrances which may be attached to or upon the building, erection, or other improvement, and to the land upon which the same is situated, to the extent aforesaid, or either of them, made subsequent to the commencement of said building, erection, or other improvement.

SEC. 9. The entire land, to the extent aforesaid, upon which any such building, erection, or other improvement is situated, including as well that part of said land which is not covered with such building, erection, or other improvement, as that part thereof which is covered with the same, shall be subject to all liens created by this act, to the extent, and only to the extent, of all the right, title, and interest owned therein by the owner or proprietor of such building, erection, or other improvement, for whose immediate use or benefit the labor was done, or things were furnished; and when the interest owned in such land, by such owner or proprietor of such building, erection, or other improvement, is only a lease-hold interest, the forfeiture of such lease for the non-payment of rent or non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as concerns the buildings, erections, and improvements thereon put by such owner or proprietor charged with such lien, but such building, erection, or improvement may be sold to satisfy said lien, and be moved within twenty days after the sale thereof by the purchaser.

SEC. 10. The liens aforesaid, or work, shall attach to the buildings, erections, or improvements for which they were furnished, or the work was done, in preference to any prior lien or incumbrance, or mortgage upon the land upon which said buildings, erections, or improvements have been erected or put; and any person enforcing such lien may have such building, erection, or improvement, sold under execution, and the purchaser may remove the same within a reasonable time thereafter.

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SEC. 11. Any person having a lien under or by virtue of this act may bring suit to enforce the same, and to obtain the benefits thereof, in the district court of the county wherein the property on which the lien is attached is situated, without regard to its amount.

SEC. 12. The pleadings, practice, process, and other proceedings in the several district courts, in cases arising under this act, shall be the same as in ordinary civil actions and civil proceedings in said courts, except as herein otherwise provided. The petition, among other things, shall allege the facts necessary for securing a lien under this act, and a description of the property charged therewith.

SEC. 13. In all suits under this act, the parties to the contract shall, and all other persons interested in the matter in controversy and in the property charged with the lien, may be made parties; but such as are not made parties shall not be bound by any such proceedings.

SEC. 14. In case of the death of any of the parties specified in the immediately preceding section, whether before or after the suit brought, the executor or administrator of such deceased party shall be made plaintiff or defendant, as the case may require, and it shall not be necessary to make the heirs or devisees of such deceased person parties to such suit; but if there be no executor or administrator of such deceased party, then his heirs or devisees may be made parties to such suit; and if any of said heirs or devisees are minors — under the age of twenty-one years — their guardians shall be made parties with them; but if such minors shall have no guardians, the court in which the suit is pending shall appoint guardians, *ad litem*, for them, in the same manner and under the same rules and regulations as guardians *ad litem* are appointed in proceedings for partition of real estate, and the judgment and proceedings of such court in any such suit shall be as binding on such minors as if they were over the age of twenty-one years.

SEC. 15. The court shall ascertain by a fair trial, in the usual way, the amount of indebtedness for which such lien is established, and render judgment for the same, and for costs of suit.

SEC. 16. Judgment by default shall be rendered against every defendant who, after being summoned or notified according to law,

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shall not appear and plead or answer within the time allowed in ordinary civil actions.

SEC. 17. When the debtor has not been served with summons according to law, and has not appeared, but has been lawfully notified by publication, the judgment, if any, for the plaintiff shall be, that he recover the amount of the indebtedness found to be due, and costs of suit, to be levied out of the property charged with the lien thereof, which said property shall be correctly described in said judgment.

SEC. 18. When the debtor has been served with summons according to law, or appear to the action, the judgment, if for the plaintiff, shall be against such debtor, as in ordinary cases, with the addition, that if no sufficient property of the debtor can be found to satisfy the judgment and costs of suit, then the residue thereof be levied as provided in the next preceding section

SEC. 19. The execution to be issued shall be a special *fieri facias*, and shall be in conformity with the judgment, and such writ shall be returnable as ordinary executions; and the advertisement, sale, and conveyance of real or personal estate under the same shall be made as under ordinary executions.

SEC. 20. All suits under this act shall be commenced within ninety days in case of sub-contractors, and six months in all other cases, from the time of filing the account or statement, as aforesaid, and not after, and be prosecuted without unnecessary delay to final judgment.

SEC. 21. Every person, including all *cestuis que trust*, for whose immediate use, enjoyment, or benefit, any building, erection, or improvement shall be made, shall be included by the word "owner" or "proprietor" under this act, not excepting such as may be minors over the age of eighteen years, or married women.

SEC. 22. Whenever any indebtedness, which is a lien upon any such real estate, erection, or building, or other improvement, shall be paid and satisfied, it shall be the duty of the creditors, if required, to go before some officer authorized to take the acknowledgment of conveyances of real estate, and acknowledge satisfaction of said lien.

SEC. 23. Such satisfaction, being acknowledged and certified, shall be filed with the recorder of the county wherein said lien is of record, who shall thereupon enter satisfaction of such lien upon

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the record, or the margin thereof, in the same manner as the satisfaction of a mortgage is entered, and shall be allowed the same fee therefor as is allowed for entering the satisfaction of a mortgage, to be paid by the creditor at the time the service is performed.

SEC. 24. If any creditor fail, refuse, or neglect to acknowledge satisfaction, as aforesaid, he shall be liable to any person injured to the amount of such injury, and the costs of suit.

SEC. 25. In case any sub-contractor shall not have notified the owner, proprietor, his agent or trustee, before furnishing the things aforesaid, or doing work, as provided for in section two, but shall furnish to him the account as provided for in section two, or the statement as provided for in section three, and in all other respects shall comply with the provisions of this act, he shall have the benefit of this act, the same as if he had given such notice, to the extent and only to the extent that such owner or proprietor can safely, with his engagements and liabilities then existing, withhold any amount by him owing to his contractor for such sub-contractor.

SEC. 26. All persons furnishing things, or doing work, as provided for by this act, shall be considered sub-contractors, except such as have therefor contracts directly with the owner or proprietor, his agent or trustee

SEC. 27. Any person or persons who have heretofore done work and labor, or furnished materials, and have availed themselves of the provisions of an act of the Idaho legislature, entitled "An act for securing liens to mechanics and others," approved January 23, 1864, and has filed within the time therein prescribed in the office of the recorder of the county, or in the county clerk's office in which such building or superstructure is situated, of the amount due them, verified by said act, shall be entitled to all the benefits of this act; and all such liens so acquired, under and by virtue of the provisions of said act, shall be as effectual to all intents and purposes as if the same had accrued under and by virtue of this act, and the provisions of this act shall in all cases be applicable to the enforcement of such liens.

SEC. 28. In all cases when liens have accrued for work and labor done, or materials furnished, which were to be paid for in gold dust or other property, the current value of such gold dust or property in United States treasury notes at the time said work and labor were done, or materials furnished, shall be the true measure

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of damages, and the court in ascertaining the same shall have due regard to the customs of the country prevailing at the time such lien accrued, and under which such work and labor were done, or material furnished; and the court, after ascertaining the value of such gold dust or other property, shall render judgment for the value thereof, and enforce the judgment of the same, as required by this act.

SEC. 29. This act shall be in force from and after its passage.

Approved December 30, 1864.

AN ACT to regulate the measure of damages in action, on express or implied contract, for the delivery of gold dust, or gold or silver bullion.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That in actions on express contracts for the payment of a certain amount in gold dust, or gold or silver bullion, or for the delivery of a certain amount of gold dust, or gold or silver bullion, the measure of damages shall be the market value of the amount of gold dust, or gold or silver bullion, in United States treasury notes, at the time it should have been delivered or paid, with interest until the time of recovering judgment.

SEC. 2. That whenever it is the general custom or usage of persons in any community to make gold dust, or gold or silver bullion, at any fixed rate, the basis for the sale of any or all goods, wares, merchandise, or any other article or articles of property whatever, it shall be lawful for any person bringing suit upon a contract, express or implied, which is not in writing, to allege and prove that the contract was made with the view and understanding, either express or implied, that such general custom or usage should be taken as a part of such contract, and that such contract was made upon the basis of gold dust, or gold or silver bullion, and the measure of damages shall be the value of the gold dust, or gold or silver bullion, found to be due and owing from one party to another, at its market value in United States treasury notes at the time it should have been delivered to such party, together with interest.

SEC. 3. This act shall be in force from and after its passage.

[Approved December 31, 1864.]

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AN ACT fixing the time of the meeting of the Legislative Assembly of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the Legislative Assembly of the Territory of Montana shall hereafter convene at the Territorial capital on the first Monday of November of each year, at twelve o'clock, M., until otherwise provided by law.

SEC. 2. This act to be in force from and after its passage.

[Approved December 31, 1864.]

AN ACT concerning chattel mortgages.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. No mortgage on goods, chattels, or personal property, shall be valid as against the rights and interest of any third person, unless possession of such personal property shall be delivered to remain with the mortgagee, or the said mortgage acknowledged and recorded as hereinafter directed.

SEC. 2. Any mortgageor of goods, chattels, or personal property may acknowledge such mortgage before any justice of the peace or other officer authorized to take acknowledgment of deeds of the county in which he may reside.

SEC. 3. Any mortgage of goods, chattels, or personal property so acknowledged shall be admitted to record by the recorder of the county in which the mortgageor shall reside at the time when the same is made, acknowledged, or recorded, and shall thereupon, if *bona fide*, be good and valid from the time it is so recorded for a space of time not exceeding one year, notwithstanding the property mortgaged or conveyed by deed of trust may be left in possession

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of the mortgageor. *Provided*, That such conveyance shall provide for the property so to remain with the mortgageor.

SEC. 4. A copy of such mortgage, made, acknowledged, and recorded as aforesaid, certified by the proper recorder, from the proper record, may be read in evidence in any court of this Territory without any further proofs of the execution of the original, if said original be lost or out of the power of the person wishing to use it.

SEC. 5. For recording each mortgage the recorder recording the same shall receive twenty-five cents for every one hundred words, and for copies thereof the same compensation only.

SEC. 6. Any person having conveyed goods or chattels, or any article of personal property, to another, by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said goods, chattels, or personal property, or any part thereof, to a third person, for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof, or if the amount claimed do not exceed one hundred dollars, before any justice of the peace.

SEC. 7. The provisions of this act shall be deemed to extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property, as shall have the effect of a mortgage or lien upon such property.

SEC. 8. The mortgagee in all mortgages made under this act shall be allowed one day for every twenty miles of the distance between his residence and the county recorder's office where such mortgage ought by law to be recorded to conform with the provisions of this act, before any attachment or execution shall be valid made by the creditor of the mortgageor.

SEC. 9. This act shall take effect and be in force from and after its passage.

[Approved December 31, 1864.]

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AN ACT to prevent the counterfeiting of gold dust, &c.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That if any person shall counterfeit any kind or species of gold dust, gold or silver bullion, or bars, lumps, pieces, or nuggets of gold or silver, or any description whatsoever of uncoined gold or silver, currently passing in this Territory, or shall alter or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver, as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep, any instrument for the purpose of counterfeiting any kind of uncoined gold or silver, as aforesaid, every person so offending, or any person or persons aiding or abetting in or about said offence or offences, shall be deemed guilty of counterfeiting, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than fourteen years.

SEC. 2. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, gold or silver bullion, or bars, lumps, pieces, or nuggets of gold or silver, or any description whatsoever of uncoined gold or silver, currently passing in this Territory, or entering in any wise into the circulating medium of the Territory, with the intention to utter, put off, or pass the same, or permit, cause, or procure the same to be uttered or passed, with the intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 3. This act shall take effect from and after its passage.

[Approved December 31, 1864.]

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AN ACT in relation to Notaries Public.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the governor shall appoint as many notaries public for said Territory as he shall deem expedient, who shall hold their office for the period of three years, and until their successors shall be duly appointed and qualified, and they shall be duly commissioned according so law.

SEC. 2. Notaries public are hereby authorized within the Territory of Montana to act, transact, do, and finish all matters and things relating to protests and protesting bills of exchange and promissory notes, and all other matters within their office required by law, to take depositions prescribed by law, and acknowledgments of deeds, and other instruments, and to administer oaths.

SEC. 3. Every notary public, before he enter upon the duties of his office, shall take an official oath, and within three months after his appointment shall provide an official seal, which shall be approved by the governor, and shall deposit an impression of the same, together with his official oath, in the office of the secretary of the Territory.

SEC. 4. The governor may remove any person heretofore, or who may hereafter be appointed a notary public, who shall neglect for six months after the passage of this bill to provide himself with a proper official seal, and who from any cause may be incompetent.

SEC. 5. It shall be sufficient for any one acting as notary public to certify an oath to be used in this Territory in any of the courts, or in any manner whatever, to say simply, in addition to his name, "Notary Public," and all the courts of this Territory shall consider an oath or affidavit properly certified by an acting notary without the impression of his seal or other or further addition.

SEC. 6. This act to take effect and be in force from and after its passage.

[Approved December 31, 1864.]

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AN ACT concerning Bills of Exchange and Promissory Notes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Inland and foreign bills of exchange and promissory notes, are hereby declared to be negotiable obligations, in this Territory, and collectable by, and in the name of the holders and owners thereof.

SEC. 2. Three days of grace shall be deemed and taken to apply to all bills of exchange and promissory notes maturing within this Territory; so that they shall not be deemed to fall due until the third day from and after the day of maturity expressed therein. But this provision shall not extend to drafts payable at sight, nor to checks for funds deposited in bank, or elsewhere, subject to draft at sight.

SEC. 3. Bills of exchange and promissory notes, falling due on Sunday, the fourth day of July, Christmas, or any day set apart by the President of the United States, or the Governor of this Territory, as a day of public fasting or thanksgiving, shall be deemed to fall due the previous day; and may be prosecuted and protested accordingly.

SEC. 4. Drawers of endorsed bills of exchange shall be primarily liable to the holders thereof, until the same shall be accepted, after which, they shall be deemed only liable secondarily thereon. Endorsers for the drawers of such bills, shall be liable as between the parties thereto, only for the default of the drawers, in the order of their endorsements thereon.

SEC. 5. Endorsers of bills of exchange and promissory notes, shall be contingently liable, only, until after they shall have been notified of the presentation and non-payment thereof, at maturity, by the person or persons primarily liable for their payment.

SEC. 6. In order to make the contingent liability of any endorser of any bill of exchange or promissory note, absolute, it shall be necessary for the holders of the paper, to cause it to be presented at the place where, by its terms, it is payable, if any place of payment be therein or thereon specified, and if no place of

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payment be specified, then to the person himself who is primarily liable for the payment; and if payment thereof, on such presentation at maturity, be neglected or refused, to cause a written or printed, or partly written and partly printed, notice of such presentation, demand and non-payment, briefly describing the bill or note, to be served immediately thereafter upon the endorser, unless the same shall be protested in the usual manner by a notary public; in which case, the official certificate of protest of such officer, made on the day of protest, enclosed in letter form, and deposited—post paid—in the post-office, directed to such endorser at his usual place of residence, will charge him in the same manner.

SEC. 7. Holders of over-due bills of exchange and promissory notes, may sue all the parties thereto, collectively, or severally, at his option; but if any of the parties thereto, who are not primarily liable for the payment, shall tender him the amount of principal, interest and costs thereon, he shall transfer the paper; and if a judgment be rendered thereon, he shall assign the judgment to such party so making the tender; and in case of refusal, he may be compelled to do so by summary proceedings, for that purpose instituted, in the district court of the district in which he shall reside.

SEC. 8. This act shall take effect from and after its passage.

[Approved December 31, 1864.]

AN ACT to prevent the sale of intoxicating liquors to soldiers.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That if any person shall sell, exchange, give, barter, or dispose of any spirituous liquors, or wine and beer, to any troops of the United States serving within the limits of this Territory, except such supplies as may be ordered by the officers of the United States army, under the direction of the war department, such person, on conviction thereof before the district court of the United States, or before any court of competent jurisdiction of this Territory hereafter to be formed, shall be imprisoned for a period not

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to exceed one year, and to pay and forfeit to the common school fund the sum of five hundred dollars.

SEC. 2. If any person who has been mustered into the United States service shall put off the uniform and other badges by which he is known and designated from a civilian, and with the intention to deceive, and shall obtain any spirituous liquor or wine and beer from any person, it shall be the duty of the marshal, sheriff, or any police officer of the Territory of Montana, upon complaint being made, to arrest, or cause to be arrested, such person, and keep him in custody until the commanding officer of the company to which he belongs shall apply for his release.

SEC. 3. If any person against whom complaint has been made for the violation of section one of this act can establish, by a good and competent witness, that spirituous liquor, or wine and beer were obtained from him deceitfully, by a soldier who did not wear at the time of obtaining such spirituous liquor, or wine and beer, a uniform, or other badges used to distinguish him from a civilian, and that he did not know such person to be a soldier, such person so complained against shall not be liable to the penalties enumerated in this act.

SEC. 4. This act to take effect and be enforced from and after its approval by the governor.

[Approved January 6, 1865.]

AN ACT in relation to offenders against the public health.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. If any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 2. If any person shall fraudulently adulterate, for the

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purpose of sale, any substance intended for food, or any wine, spirits, or malt liquor, or other liquor, intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars; and the article so adulterated shall be forfeited and destroyed.

SEC. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or sell any drug or medicine knowing it to be adulterated, or offer the same for sale, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; and such adulterated drugs and medicines shall be forfeited and destroyed.

SEC. 4. If any person shall inoculate himself, or any other person, or shall suffer himself to be inoculated, with the small-pox, within this Territory, with the intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the Territorial prison not more than three years nor less than one year.

SEC. 5. If any physician, or other person, while in a state of intoxication shall prescribe any poisonous drug or medicine to another person, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 6. Every apothecary, druggist, or other person, who shall sell or deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "Poison," and the true name thereof in English, written or printed upon a label attached to the vial, box, or parcel containing the same, shall be punished by a fine not exceeding two hundred dollars.

SEC. 7. This act shall take effect and be in force from and after its passage.

[Approved January 6, 1865.]

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AN ACT to prohibit the sale of ardent spirits, fire-arms or ammunition to Indians.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Any person who shall, after the passage of this act, sell, barter, give, or in any manner dispose of, any spirituous or malt liquor to any Indian, or Indians, or any fire-arms or ammunition of any description whatever, to any hostile Indians within this Territory, shall be deemed guilty of a misdemeanor, and upon due conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for any term not exceeding six months, or both such fine and imprisonment, in the discretion of the court.

SEC. 2. Indians, as provided for by law of Congress, shall be competent witnesses in the trial of all causes embraced in the provisions of this act.

SEC. 3. This act to take effect and be in force from and after after its passage.

[Approved January 6, 1865.]

AN ACT regulating the width of roads.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the width of all Territorial and county roads, not otherwise specified, shall be sixty-six feet.

SEC. 2. This act shall take effect and be in force from and after its passage.

[Approved January 6, 1865.]

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AN ACT to provide for, and regulate the rates of charges, for the publication of legal documents.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Publishers of newspapers in this Territory shall be entitled to the following fees for the publication of all legal advertisements: For the first insertion of each folio of one hundred words, five dollars; for each subsequent insertion, two dollars and fifty cents.

SEC. 2. When any notice or advertisement shall be required by law, or the order of any court, to be published in any newspaper, the certificate of the printer or publisher, under oath, with a printed copy of such notice or advertisement annexed, stating the number of times which the same shall have been published, and the dates of the first and last paper containing the same shall be sufficient evidence of the publication, therein set forth. Notices, when thus certified, shall be part of the records of the court.

SEC 3. The printer of such legal advertisement shall be entitled to payment of his full fees before being required to furnish a certificate of publication.

SEC. 4. This act shall take effect and be in force from and after its passage.

[Approved January 9, 1865.]

AN ACT declaratory of the rights of occupants of the public domain, except as against the United States.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Conceding to the United States of America the primary and paramount right to dispose of the soil of this Territory, according to the laws existing or to be enacted by Congress, and

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full and complete exemption from every form of taxation of their property, it is hereby declared that as between all citizens now residing in, or who shall hereafter come to reside in this Territory, and as between them, or any of them, and others having or claiming now, or hereafter pretending to have or claim, any right to occupy, possess or enjoy any portion of the public domain, situate within the boundaries of this Territory, and as between each and every one of them, and all other persons, associations, corporations, and powers, except the Government of the United States of America, the right as the same may exist under the local laws, to occupy, possess and enjoy any tract or portion thereof, not to exceed one hundred and sixty acres, in such form as may be prescribed by the laws of the United States, shall be respected in law and in equity in all the courts and tribunals of this Territory, as a chattel real, possessing the character of real estate.

SEC. 2. All rights of occupancy, possession and enjoyment of any tract or portion of the said public domain, except mining claims, shall be expressed and described in a declaration, in cases of original occupation, and by deed in cases of purchase, duly acknowledged by some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the land is situated.

SEC. 3. The owner of every claim or improvement on any tract or parcel of land, has transferable interest therein, which may be sold by execution or otherwise, and any sale of such improvement is a sufficient consideration to sustain a promise.

SEC. 4. All rights of occupancy, possession and enjoyment of any tract or portion of the said public domain acquired before the passage of this act, shall be ascertained, adjudged and determined by the local law of the district or precinct, in which such tract is situated, as it existed on the day when such rights were acquired, or as it thereafter may have existed, then by the common custom then prevailing, in respect to such property, in the district or precinct in which it existed.

SEC. 5. The declaration of an occupant of a tract or portion of the public domain, required by the second section of this act, shall be substantially in the following form:

To all whom these presents may concern: Know ye, that I, A. B. of ———— in the County of ————, in the Territory of

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Montana, do hereby declare and publish as a legal notice to all the world, that I have a valid right to the occupation, possession and enjoyment of all and singular that tract or parcel of land not exceeding one hundred and sixty acres, situate, lying and being in the Township of ———— in the County of ————, in the Territory of Montana, bounded and described as follows: [here insert the description;] together with all and singular the hereditaments and appurtenances, thereunto belonging or in anywise appertaining.

Witness my hand and seal, this ——— day of ————, one thousand eight hundred and sixty——.

To be subscribed with the full christian name and surname of the person making the application, acknowledged in the same manner as a deed of real estate.

SEC. 6. All persons, associations, and companies, now claiming individually and collectively, the right to the occupancy, possession and enjoyment of any tract or parcel of the said public domains, except mining claims, under or by virtue of the terms expressed in the fourth section of this act, and other muniments of title, for record, with the recorder of the county in which the lands shall be situated, within three months from the time a duly elected recorder shall enter upon his duties, unless within that time the books of record in which they may have been recorded according to the local law or custom shall have been deposited in said office for the public use.

SEC. 7. In all legal or equitable proceedings hereafter instituted in any court in this Territory, the record of any declaration deed or mortgage, or any other muniments of right referred to in the third and fifth sections of this act, shall be received except as against the United States, and all other persons claiming under the United States, as presumptive evidence of the regularity of the paper itself, under the local law or custom existing at the true time of its execution, and if the regularity thereof shall be challenged, the burden of proving the alleged irregularity shall be upon the party making the challenge.

SEC. 8. The declaration of every occupant of any tract or portion of the public domain mentioned in section five of this act, shall not be construed to include any gold-bearing quartz lodes, silver lodes, or gold diggings, but said lodes or diggings shall be excepted from the tract of said occupant, and shall be subject to be

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occupied, possessed and enjoyed, according to the local laws or customs of the district in which the same may be situated, and if there shall be no local law or custom on said district, then by the custom prevailing in the nearest mining district thereto.

SEC. 9. This act shall take effect, and be in full force, from and after its passage.

[Approved January 9, 1865.]

AN ACT to prevent the trespassing of animals upon private property.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. If any horse, mule, jack, jennie, hog, sheep, or any kind of neat cattle, shall break into any ground inclosed by a lawful fence, the owner or manager of such animal, shall be liable to the owner of such inclosed premises for all damages sustained by such trespass; and if the trespass be repeated, by the neglect of the owner or manager of such animals, he or she or they shall, for the second or every subsequent offence or trespass, be subject to double the damages of such trespass to the owner of said premises.

SEC. 2. If any owner or occupier of any grounds or crops trespassed upon, by animals entering upon or breaking into his or her or their inclosure, whether the same be inclosed by a lawful fence or not, shall maim or materially injure the animal or animals so trespassing, he, she, or they, shall be liable to the owner or owners of such stock for all damages and for the costs accruing from a suit for damages, when necessarily resorted to for their recovery: *Provided*, the owner or occupier of such grounds or crops so damaged and so trespassed upon may take up and safely keep, at the expense of the owner or owners thereof, after due notice to said owners of such animals, or as many of them as may be necessary to cover the damages he may have sustained, for ten days; the same may be posted under the estray laws of the Territory, and before restitution shall be had by the owner or owners of such animals, all damages done by them, as well as the expense of posting and keeping them, shall be paid. Any justice of the peace in the township

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or precinct shall have jurisdiction of all such reclamation of animals, together with the damages, expenses of keeping and posting the same, when the amount claimed does not exceed one hundred dollars.

SEC. 3. When two or more persons shall cultivate lands under one inclosure, neither of them shall place or cause to be placed any animal on his, her, or their, ground, to the injury or damage of the other or others, but shall be liable for all damages thus sustained by the other or others, and if repeated after due notice is given, and for every subsequent repetition, double damages, to be recovered in any court having jurisdiction.

SEC. 4. This act shall be in force from and after its passage.

[Approved January 9, 1865.]

AN ACT creating the office of District Attorney, in each of the organized judicial districts of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be a district attorney for each of the organized districts as now established by law. They shall hold their offices for the term of two years, and until their successors are elected or appointed as required by law.

SEC. 2. They shall each, before entering upon the duties of their offices, execute and file with the judge of their respective districts, a bond, to be approved by said judge, with one or more sureties, in the sum of five thousand dollars, conditioned that they will well and truly pay over all moneys collected by them as such district attorneys, and for the faithful performance of their duties; which bond shall be forwarded, by said judge, and filed in the office of the secretary of the Territory.

SEC. 3. They shall be public prosecutors in their respective districts, and shall sign all bills and indictments that may be found by the grand jury, and prosecute, on behalf of the people, all public prosecutions, wherein the people of this Territory are a party.

SEC. 4. They shall, when required by any member of the grand

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jury, give their opinion to them on any matter of law pertaining to their duties as grand jurors, and shall—when requested by any county or township officer—give to them, their opinion on any matter of law pertaining to their duties, without fee or reward. They shall also prosecute, on behalf of the people, all forfeited recognizances, and shall receive, to their own proper use, ten per centum of all monies collected, and ten per centum on all forfeited bonds and recognizances, and undertakings wherein the people are a party, or necessarily involved in the action.

SEC. 5. They shall receive an annual salary of fifteen hundred dollars, payable quarterly, out of the Territorial treasury, out of any moneys not otherwise appropriated, upon an order drawn upon the Territorial treasurer by any judicial district judge of their respective districts. They shall be entitled to the following fees, to wit: For every conviction of felony where the punishment is death, fifty dollars; for every conviction of felony where the punishment is other than death, twenty-five dollars; and for every misdemeanor, the sum of fifteen dollars; payable out of the county treasury where the offence shall have been committed, as other moneys are drawn and paid out of said treasury.

SEC. 6. This act to take effect, and be in force, from and after its approval by the governor.

[Approved January 10, 1865.]

AN ACT designating the time for holding a term of the district court in Madison county.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the first term of the district court for the county of Madison for the present year shall commence on the second Monday in March next, instead of the first Monday in February, as designated by the governor's proclamation, and at such other times as may hereafter be prescribed by law.

SEC. 2. All writs and other process heretofore returnable to the

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February term shall be returned to the term of court to commence on the second Monday in March.

SEC. 3. This act shall be in force from and after its passage.

[Approved January 10, 1865.]

AN ACT to prevent betting and gambling.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That if any person shall deal, play at, or make any bet or wager for money, or other things of value, at any of the games called or known as "three card monte," "strap game," "thimble rig game," "patent safe game," "black and red game," —commonly known as the "ten dice game,"—any dice game, two card box at "faro," or any similar game or games, or shall induce, or attempt to induce, any person whatever to make any bet or wager at any such game, any such person so offending shall, on conviction, be punished by imprisonment for a term not exceeding five years in the county jail, or by fine not exceeding one thousand dollars, or both such fine and imprisonment, by any court of competent jurisdiction.

SEC. 2. If the keeper of any house, shop, tent, saloon, booth, or other place, shall knowingly permit any of the games mentioned in the preceding section, or any game of similar character, or any other game or games where fraud or cheating is practiced, or where loaded dice, marked cards, or waxed cards are used, within said house, shop, tent, saloon, booth, place, or enclosure, every such person so offending shall, on conviction, be punished by fine not exceeding one thousand dollars, and shall forfeit any license he may have obtained to keep any tavern, saloon, shop, or other place.

SEC. 3. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved January 11, 1865.]

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AN ACT relating to fords.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That no charter for ferry or bridge company granted by the legislature of this Territory shall be so construed as to authorize such company to exclude or prevent the public from the free use of any ford that may cross any stream at or near the ferry or bridge of said company.

SEC. 2. The owner or keeper of such bridge or ferry shall not in any way obstruct the passage to or from any ford across any stream; and any person, upon conviction of thus obstructing any fording or ford in any manner whatsoever, shall be liable to a fine of not less than fifty dollars nor more than one hundred dollars.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved January 11, 1865.]

AN ACT to prevent the carrying of concealed deadly weapons in the cities and towns of this Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. If any person shall within any city, town, or village in this Territory, whether the same is incorporated or not, carry concealed upon his or her person any pistol, bowie-knife, dagger, or other deadly weapon, shall, on conviction thereof before any justice of the peace of the proper county, be fined in any sum not less than twenty-five dollars nor more than one hundred dollars.

SEC. 2. The provisions of this act shall not be construed to apply to sheriffs, constables, or police officers.

SEC. 3. This act shall be in force from and after its passage.

[Approved January 11, 1865.]

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AN ACT adopting the common law of England.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the common law of England, so far as the same is applicable and of a general nature, and not in conflict with special enactments of this Territory, shall be the law and the rule of decision, and shall be considered as of full force until repealed by legislative authority.

SEC. 2. This act shall be in force from and after its passage.

[Approved January 11, 1865.]

AN ACT concerning lost goods and estrays.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Any person stopping or taking up any kind of water craft or timber, logs or lumber, adrift upon any water-course within or upon the borders of this Territory, or lodged upon the shore or bank thereof, or any stray beast, or finding any money or personal property, shall proceed forthwith as follows:

SEC. 2. If the property does not exceed ten dollars in value he shall put up two written advertisements, containing a notice of the finding, and description of the property, in two public places of the township where it is found, and file one such notice in the county clerk's office; and if no owner appears within six months from advertisement and proves his property and pays the reasonable charges the property shall vest in the finder.

SEC. 3. If the property exceeds ten dollars, and does not exceed thirty dollars in value, the finder shall, within five days after the finding, appear before a justice of the peace of the county, or the county clerk, and make a written statement, setting forth the

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time and place of the finding, and a general description of the property, and the officer shall issue his warrant appointing three disinterested persons to examine the property, and to report under their hands an appraisement and an accurate description of the property, sesting forth all marks that may assist to identify the same. The report shall be sworn to by the appraisers and also by the finder, so far as the state or condition that the property named was in at the time when found, and that neither the property nor any mark on the same has been altered or defaced by him or by any other person with his knowledge or consent.

SEC. 4. If the property is appraised at more than ten dollars in value, the justice shall return the statement of the finder, his warrant, and the report of the appraisers, with the affidavit, to the county clerk, and the county clerk shall enter them at large in a book to be kept for that purpose, and post a notice containing the finder's statement and the appraisers' report on the door of the court house, and the finder shall also give such notice as before directed. If the property is appraised at more than ten and not more than thirty dollars, and if no owner appear and prove his property and pay the charges thereon within nine months from the filing of the papers with the clerk, the property shall vest in the finder on his paying the costs of the above proceedings, and not before.

SEC. 5. If the appraisement of the property exceed thirty dollars, in addition to the notices above directed, the county clerk shall publish for four weeks in some newspaper in his county, or if there be none, then in some other county in the Territory, a notice of the time and place of finding, with the finder's name, and a general description of the property, and if no owner appear and prove his property within twelve months from the time the notices above directed were first published, the finder may take the property, and the right thereof shall be vested in him if he will pay the expenses and pay one-half of the appraised value out of the original appraisement, deducting the charges, into the county treasury.

SEC. 6. If the finder does not take the property on the above terms, the county clerk shall issue a warrant under his hand, to the sheriff or a constable, to sell the property in the same manner as on execution, and having deducted the whole charges, to pay one-half of the remainder into the county treasury and the other

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half to the finder; but if the owner appear before the sale takes place, he may still prove his property and pay the charges as above provided, and the sale may be adjourned therefor.

SEC. 7. If the appraisement of property exceed one hundred dollars, and the property does not consist of domestic animals, it shall be kept two years for the owner's appearance, and the sale provided for in the two preceding sections shall not take place within that time.

SEC. 8. But if the property in any of the cases above contemplated consist of domestic animals, and the notice is given, or the notice filed in the office of the county clerk after the first day of December, and before the first day of April, nine months shall be required to pass before the proceedings to rest the property in the finder, or for a sale to take place, shall be held.

SEC. 9. No person is authorized to take up straying animals (save stallions, jacks, and trespassing animals) except in the civil township in which he resides, nor shall the property in them vest in the finder before the first day of December if taken up after the last day of March.

SEC. 10. When money other than for costs is paid into the county treasury under any of the preceding sections of this act, the owner of the property will be entitled to the money on making claim thereof within six months from the time it is paid in and proving his right to the satisfaction of the county clerk.

SEC. 11. The certificate of the county clerk, the return of the sheriff or constable, or the affidavit of an indifferent person of the giving of the notices above required, accompanied by one of the notices, or a copy thereof, and filed with the clerk, shall be *prima facie* evidence of the facts stated in the certificate, return, or affidavit.

SEC. 12. No property such as above described shall vest in the finder unless he has substantially pursued the directions of this act.

SEC. 13. If the charges of the finder cannot be agreed upon by him and the county clerk, or when a claimant appears, by him and the finder, they shall be settled by the county clerk or a justice of the peace, upon a case made by the above parties, and if the finder refuse to make a case he shall receive no charges, and if the owner refuse the clerk or justice shall decide without it.

SEC. 14. If such a case be made between the finder and the

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county clerk, the costs of the case shall be taken from the proceeds of the property; if between the finder and the owner, each shall pay one-half the costs which the clerk or justice may demand before adjudication.

SEC. 15. If the ownership of the property cannot be agreed upon by the finder and the claimant, they may make a case before the county clerk, or any court of competent jurisdiction, who may hear and adjudicate it; and if either of them refuse to make such case, the other may make an affidavit of the facts which have previously occurred, and the claimant shall also verify his claim in his affidavit, and the clerk or court may take cognizance of and try the matter on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law.

SEC. 16. When the property found consists of more than one item or article of property, the value above spoken of as governing the proceeding means their aggregate value.

SEC. 17. As a reward for stopping, taking up, and securing any property as aforesaid, the finder shall be entitled to one dollar at least, and ten per cent. on the appraised value above ten dollars, and his expenses in securing and keeping it; but there shall be no compensation allowed for keeping working animals taken up under this act, when used.

SEC. 18. The following charges shall be allowed, viz: To the justice of the peace or the court for the initiatory proceedings, two dollars; to the county clerk, two dollars; and when there is an advertisement in a newspaper the legal rates thereof, two dollars additional fees for printing; to the sheriff or constable the same fees as for similar services in actions before justices; to each appraiser, three dollars; to the justice or court for deciding the case concerning the charges, one dollar, which charges, except the sheriff's and constable's compensation, shall be paid by the finder, and allowed him out of the property, or be paid by the owner.

SEC. 19. No person shall be authorized to take up any stray beast unless he be a citizen and householder, unless he first enter into bond with sufficient sureties to the Territory for the use of the owner in double the amount of the value of the property proposed to be taken up, to be ascertained by the justice of the peace before whom the person wishes to post such stray beast.

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SEC. 20. Any person may use an estray beast legally taken up by him, if he do so with care and moderation, and do not abuse or injure it, but in no case shall the finder charge the owner any compensation for the keeping of said estray during the period of his so working it.

SEC. 21. If any estray legally taken up get away or die, without the fault of the finder, he shall not be liable for the same.

SEC. 22. If any person shall sell or dispose of, or take out of the Territory, any estray before the legal title shall be vested in him, he shall forfeit to the county double the value of such estray, and upon conviction may be imprisoned in the county jail not exceeding one year and forfeit to the owner double the value of such property.

SEC. 23. If any person unlawfully take up an estray, or take up an estray and fail to comply with this act, or use or work such estray in any manner contrary to this act, or use or work it before having it appraised, or shall keep the same more than ten days out of the county at any one time before he acquire a title to the same, he shall forfeit to the county twenty-five dollars.

SEC. 24. If any person take up any estray, and violate or fail to comply with this act, or abuse or injure such estray, the owner may recover of him double the amount of all injuries sustained with costs.

SEC. 25. This act shall take effect, and be in force, from and after its passage and approval by the governor.

[Approved January 11, 1865.]

AN ACT concerning the writ of Habeas Corpus.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That every person unlawfully committed, detained, confined or restrained of his liberty, under any pretence whatever, may prosecute a writ of habeas corpus, to enquire into the cause of such imprisonment.

SEC. 2. Application for such writ shall be made by petition,

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signed either by the party for whose relief it is intended, or by some person in his or her behalf, and shall specify: First, That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he or she is confined or restrained, and the place where, naming all the parties, if they are known, or describing them if they are known; Second, If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists; Third, The petition must be verified by oath or affirmation of the party making application.

SEC. 3. Such writ of habeas corpus may be granted by any judge of the supreme court or district courts at any time, in term or vacation.

SEC. 4. Any judge empowered to grant a writ applied for under this act, if it appear that the writ ought to issue, shall grant the same without delay.

SEC. 5. Such writ shall be directed to the officer or party having such prisoner in custody or under restraint, commanding him or them (as the case may be) to have the body of such person so imprisoned or detained, as is alleged by the petition, before the judge shall direct, specifying in such writ the place where the petition will be heard; to do and receive what shall then and there be considered concerning such person, together with the time and cause of his or her detention, and have then and there such writ.

SEC. 6. If such writ be directed to the sheriff or other ministerial officer, it shall be delivered by the clerk of the court prescribed by the judge issuing said writ to such officer without delay.

SEC. 7. If such writ be directed to any person other than is specified in the last preceding section, the same shall be delivered to the sheriff or his deputy, and shall be by him served upon such person, by delivering the same to him without delay.

SEC. 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving such writ at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside of his dwelling-house, or the place where the party is confined or under restraint. The service of said writ is

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made by serving a copy and exhibiting the original, and where the posting is required by posting a copy.

SEC. 9. If the officer or person to whom such writ is directed, shall refuse, after due service as aforesaid, to obey the same, it shall be the duty of the judge upon affidavit to issue an attachment against such person, directed to the sheriff, or if the sheriff be defendant, to an elisor appointed for that purpose by the judge, commanding forthwith to apprehend such person and bring him immediately before such judge, and upon being so brought, he shall be committed to the common jail of the county until he make due return of such writ, or be otherwise legally discharged.

SEC. 10. The party upon whom such writ shall be duly served, shall state in his return plainly and unequivocally: First, Whether he have or not the party in his custody or under his power or restraint; Second, If he have the party in his custody or power or under his restraint, he shall also state the authority and cause of such imprisonment or restraint, setting forth the same at large; Third, If the party be detained by virtue of any writ, warrant, or any other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the judge on the hearing of such return; Fourth, If the officer or person on whom such writ shall have been served shall have had the party in custody or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but such officer or person has transferred such custody or restraint to another, the return shall state particularly, to whom, at what time and place, for what cause and by what authority, such transfer took place; Fifth, The return must be signed by the person making the same, and, except when such person shall be a sworn officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

SEC. 11. If the writ of habeas corpus be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody or restraint, according to the command of the writ, except in the case specified in the next two sections.

SEC. 12. Whenever from sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the judge, the officer or

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person in whose custody or power he or she is, may state that fact in his return to the writ, verifying the same by affidavit.

SEC. 13. If the judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, such judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

SEC. 14. The judge before whom a writ of habeas corpus shall be returned, shall immediately thereafter proceed to hear and examine the return, and such other matter as may be properly submitted to his hearing and consideration.

SEC. 15. The party brought before the judge on the return of the writ may deny or controvert any material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his or her imprisonment or detention is unlawful, or that he or she is entitled to his or her discharge.

SEC. 16. Such judge shall thereupon proceed in a summary manner to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the law and the justice of the case may require.

SEC. 17. Such judge shall have full power and authority to require and compel the attendance of witnesses by process or subpœna and attachment, and do and perform all other acts and things necessary to a full and fair hearing and determination of the cause.

SEC. 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such judge shall discharge such party from the custody or restraint, under which he or she is held.

SEC. 19. It shall be the duty of such judge, if the time during which such party may be legally detained in custody has not expired, to remand such party, if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent court of criminal jurisdiction, or upon any process issued upon such judgment or decree, or in cases of contempt of court.

SEC. 20. If it appear upon the return of the writ of habeas corpus, that the prisoner is in custody by virtue of the process

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from any court in the Territory, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last preceding section: First, When the jurisdiction of such court or officer has been exceeded; Second, When the imprisonment was at first lawful, yet by some act, omission, or event, which has taken place afterwards, the party has become entitled to be discharged; Third, When the process is defective in some matter of substance required by law, rendering such process void; Fourth, When the process, though proper in form, has been in a case not allowed by law; Fifth, When the person having the custody of the prisoner is not the person allowed by law to detain him; Sixth, Where the imprisonment is not authorized by any judgment, order, or decree of any court, nor by any provision of law; Seventh, Where a party is committed on a criminal charge, without reasonable or probable cause.

SEC. 21. If any person be committed to prison, or he be in custody of any officer, on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the grounds of any defect of form in such warrant or commitment.

SEC. 22. If it shall appear to the judge by affidavit, or upon the hearing of the matter, or otherwise upon the implication of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such judge, that the party is guilty of criminal offence, or ought to be discharged, such judge, although the charge be defectively or insubstantially set forth in such process or warrant of commitment, shall cause the complainant or other necessary witnesses to be subpœnaed to attend at such time as shall be ordered, to testify before such judge; and upon the examination he shall discharge such prisoner, or let him or her to bail (if the offence be bailable), or recommit him or her to custody, as may be just and legal.

SEC 23. Whenever any person may be imprisoned or detained in custody on any criminal charge for want of bail, such person shall be entitled to a writ of habeas corpus, for the purpose of giving bail, upon avering that fact in his petition, without alleging that he or she is illegally confined.

SEC. 24. Any judge before whom any person who has been committed on a criminal charge shall be brought on a writ of habeas

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corpus, if the same be bailable, may take a recognizance from such person, as in other cases, and shall file the same in the proper court without delay.

SEC. 25. If any person brought before the judge on return of the writ be not entitled to his or her discharge, and be not bailed, where such bail is allowable, such judge shall remand him or her to custody, or place him or her under the restraint from which he or she was taken, if the person under whose custody or restraint he or she was be legally entitled thereto.

SEC. 26. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, such judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

SEC. 27. Until judgment be given on the return, the judge before whom any party may be brought on such writ may commit him or her to the custody of the sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

SEC. 28 No writ of habeas corpus shall be disobeyed for defect of form if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him or her, and the judge before whom he or she is brought.

SEC. 29. No person who has been discharged by the order of the judge upon a writ of habeas corpus, issued pursuant to the provisions of this act, shall be again imprisoned, restrained, or kept in custody, for the same cause, except in the following cases: First, If he or she shall have been discharged from custody on a criminal charge, and be afterwards committed for the same offence by legal order or process. Second, If after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner may be again arrested, on sufficient proof, and committed by legal process for the same offence.

SEC. 30. Whenever it shall appear by satisfactory proof, by affidavit, to any judge authorized by law to grant a writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the judge before whom

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the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, said judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff, or any constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and bring him or them forthwith before such judge to be dealt with according to law.

SEC. 31. Such judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

SEC. 32. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the judge who may have directed the issuing of such warrant.

SEC. 33. The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial be had thereon as upon the return to a writ of habeas corpus.

SEC. 34. If such party be held under illegal restraint or custody he or she shall be discharged, and if not, he or she shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

SEC. 35. All writs, warrants, processes, and subpœnas, authorized by the provisions of this act, shall be issued by the clerk of the court, and (except subpœnas) sealed with the seal of the court, and shall be served and returned forthwith, unless the judge shall specify a particular time for any such return.

SEC. 36. If any judge, after a proper application is made, shall refuse to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ is directed shall refuse obedience to the command thereof, he or they shall forfeit and pay to the person agrieved a sum not exceeding five thousand dollars, to be recovered by an action of debt in any court having cognizance thereof.

SEC. 37. Any person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus shall have been duly issued, pursuant to the provisions of this act, who with the intent to elude the service of such writ, or to

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avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or exchange the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such judge, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding five thousand dollars nor less than one thousand dollars.

SEC. 38. Every person who shall knowingly aid or assist in the commission of any offence specified in the last preceding section, shall be deemed guilty of a misdemeanor, and punished as in the last preceding section.

SEC. 39. Every person convicted of any offence under the provisions of the last preceding section, in addition to the punishment therein mentioned, may also be imprisoned in the county jail for a term not exceeding one year.

SEC. 40. This act to take effect and be in force from and after its passage

[Approved January 11, 1865.]

AN ACT to protect and regulate the irrigation of land in Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That all persons who claim, own, or hold a possessory right or title to any land, or parcel of land, within the boundary of Montana Territory, as defined in the organic act of this Territory, when those claims are on the bank, margin, or neighborhood of any stream of water, creek, or river, shall be entitled to the use of the water of said stream, creek, or river for the purpose of irrigation, and making said claim available to the full extent of the soil for agricultural purposes.

SEC. 2 That when any person owning claims in such locality has not sufficient length of area exposed to said stream in order to obtain a sufficient fall of water necessary to irrigate his land, or that his farm or land used by him for agricultural purposes is too far removed from said stream, and that he has no water facilities on

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those lands, he shall be entitled to a right of way through the farms or tracts of land which lie between him and said stream, or the farms or tracts of land which lie above and below him on said stream, for the purposes as hereinbefore stated.

SEC. 3. That such right of way shall extend only to a ditch, dyke, or cutting sufficient for the purposes required.

SEC. 4. That in case the volume of water in said stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, then the nearest justice of the peace shall appoint three commissioners, as hereinafter provided, whose duty it shall be to apportion, in a just and equitable proportion, a certain amount of said water, upon certain alternate weekly days, to different localities, as they may in their judgment think best for the interest of all parties concerned, and with a due regard to the legal rights of all.

SEC. 5. That upon the refusal of owners of tracts of land or lands through which said ditch is proposed to run to allow of its passage through their property, it shall be proper for any justice of the peace, upon application being made, and proper notice being given to parties, as in other cases of litigation under the jurisdiction of a justice of the peace, to appoint three commissioners or reviewers, composed of disinterested claim holders within the townships, who shall proceed to view the premises, taking into consideration the necessities and rights of both parties, also the size of the cutting.

SEC. 6. That if the commissioners thus appointed shall think proper, they shall proceed to assess any damage which said ditch may cause to the owner of the lands through which it passes, taking also into consideration any advantage which he may derive from said ditch.

SEC. 7. That said assessment, upon its proper returns, sworn to and properly certified, the justice of the peace shall proceed to render his judgment, based upon the assessment of the commissioners, as he would do in any action of debt which may come under his jurisdiction, and subject to the like mode of execution and enforcement. In case the damage shall exceed the jurisdiction of the justice of the peace, the commissioners shall report to the probate judge of the county, who shall proceed in the same manner as required of the justice of the peace.

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SEC. 8. That all persons on the margin, brink, neighborhood, or precinct of any stream of water, shall have the right and power to place upon the bank of said stream a wheel, or other machine, for the purpose of raising water to the level required for purposes of irrigation, and that the right of way shall not be refused by the owners of any tract of land upon which it is required, subject to the like regulation as required for ditches, and laid down in the preceding sections.

SEC. 9. That the said commissioners, as provided for in section five, shall be allowed two dollars each per day for their services.

SEC. 10. That the provisions of the sections of this act shall not conflict with any rights of mills or millmen, or interfere with any milldam, race, or water course which already exists.

SEC. 11. That the provisions of this act shall also entail upon the parties using water as provided above, the careful management and control of said water, that in their waste they shall not injure any one, and if so injured, damages shall be assessed as hereinbefore provided.

SEC. 12. That this act to take effect from and after its passage.

[Approved January 12, 1865.]

AN ACT to exempt the property of married women from execution in certain cases.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the property owned by any married woman before her marriage, and that which she may acquire after her marriage, by descent, gift, grant, devise, or otherwise, and the increase, use, and profits thereof, shall be exempt from all debts and liabilities of the husband, unless for necessary articles procured for the use and benefit of herself and her children under the age of eighteen years: *Provided, however*, That the provisions of this act shall extend only to such property as shall be mentioned in a list of the property of such married woman as is on record in the office

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of the register of deeds of the county in which such married woman resides.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved January 12, 1865.]

AN ACT concerning Attorneys and Counsellors at Law.

Be it enacted by the Legislative Assembly of the Territord of Montana:

SEC. 1. No person shall be permitted to practice as an attorney and counsellor at law, or to commence, conduct or defend any action, suit or plaint, in which he is not a party concerned in any court of record within this Territory, either by using or subscribing his own name, or the name of any other person, without previously having obtained a license for that purpose from some two of the justices of the supreme court, which license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all the courts of record within this Territory, and there to practise as an attorney and counsellor at law, according to the laws and customs thereof, for and during his good behavior in said practice, and to demand and to receive all such fees as an attorney and counsellor at law in this Territory.

SEC. 2. No person shall be entitled to receive license as aforesaid until he shall have obtained a certificate from the court of some county, of his good moral character, also a certificate from one or more reputable counsellors at law, that he has been engaged in the study of law for two successive years prior to the making of such application.

SEC. 3. It shall be the duty of the supreme court to appoint a standing committee of three attorneys at law for each judicial district of this Territory, whose duty it shall be to examine all applicants for license as aforesaid, and if upon such examination a majority of such committee shall deem the applicant qualified to practise as an attorney and counsellor at law in the courts of this Territory,

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they shall sign a certificate to that effect, and transmit the same to the clerk of the supreme court.

SEC. 4. It shall be the duty of the clerk of the supreme court to make out and keep a roll or record, stating at the head or commencement thereof, that the persons whose names are therein written, have been regularly licensed and admitted to practise as attorneys and counsellors at law within this Territory, and that they have duly taken the oath to support the Constitution of the United States and the Organic Act of this Territory, and also the oath of office prescribed by law, which shall be certified and endorsed on said license.

SEC. 5. And no person whose name is not subscribed to, or written on the said roll with the day and the year when the same was subscribed thereto, or written thereon, shall be suffered, or admitted to practise as an attorney or counsellor at law within this Territory, under the penalty hereinafter mentioned, anything in this act to the contrary notwithstanding; and the justices of the supreme court in open court, shall have power, at their discretion, to erase the name of any attorney or counsellor at law from the roll for mal-conduct in his profession.

SEC. 6. In all cases where an attorney of any court of this Territory, or solicitor in chancery, shall have received, or may hereafter receive, in his said office of attorney, or solicitor, in the course of collection or settlement, any money or other property belonging to any client, and shall upon demand made, and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested to apply to the supreme court of this Territory, for a rule upon the said attorney or solicitor to show cause at a time to be fixed by the said court, why the name of said attorney or solicitor should not be stricken from the roll, a copy of which rule shall be duly served on said attorney or solicitor at least ten days previous to the day upon which said rule shall be made returnable; and if upon said rule it shall be made to appear to the said court that such attorney or solicitor has improperly neglected or refused to pay over or deliver said money or property so demanded as aforesaid, it shall be the duty of said court to direct that the name of said attorney or solicitor be stricken from the roll of attorneys in said court.

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SEC. 7. Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his defence, and allowed reasonable time to collect and prepare testimony for his justification; and any attorney whose name shall at any time be stricken from the roll by order of the court, in the manner aforesaid, shall be considered as though his name had never been written thereon, until such time as the said justice, in open court, shall authorize him to sign or subscribe the same.

SEC. 8. All attorneys or counsellors at law, judges, clerks and sheriffs, and other officers of the several courts within this Territory, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may, in all respects, be prosecuted and proceeded against in the same court and in the same manner as other persons are, any law, usage or custom to the contrary notwithstanding: *Provided, nevertheless,* said judge, counsellors and attorneys of said court, shall be privileged from arrest while attending courts, and while going to and returning from court.

SEC. 9. Any person producing a license or other satisfactory voucher proving that he hath been regularly admitted an attorney at law in any court of record within the United States, that he is of good moral character, may be licensed and permitted to practice as a counsellor and attorney at law in any court in this Territory without examination.

SEC. 10. If any person not licensed as aforesaid shall receive any money, or any species of property as fee or compensation for services rendered or to be rendered by him as attorney or counsellor at law within this Territory, all money so received by him shall be considered as money received to the use of the person paying the same, and may be recovered back with costs of suit, by an action for money had and received, and all property conveyed or delivered for the purpose aforesaid, or the value thereof, may be recovered back with costs of suit by the person conveying or delivering the same, by action of detenue or trover and conversion, and the person receiving such money or property shall forfeit threefold the amount or value thereof, to be recovered with costs of suit before any magistrate, if within a magistrate's jurisdiction, but if not in

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any court of record within the Territory, by action of debt qui-tam, the one-half to the use of the person who shall sue for and recover the same, and the other half to the use of the county in which such suit shall be brought, and if any person shall sign or cause to be signed the name of any attorney, or either of the judges of the supreme court, to any certificate or license provided for in this act, with an intent to deceive such person, shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

SEC. 11. Plaintiff shall have the liberty of prosecuting, and defendant shall have the privilege of defending in their proper persons, and nothing herein contained shall be so construed as to affect any person heretofore admitted to the degree of attorney or counsellor at law in this Territory, so as to subject them to further examination, or to make it necessary for them to renew their license.

SEC. 12. Whenever any counsellor at law residing in any of the adjacent States or Territories, may have any business in any of the courts of this Territory, he may be admitted on motion for the purpose of transacting such business and none other.

SEC. 13. All public officers, sheriffs, coroners, jailors, constables, or other officers or persons, having in custody any person committed, imprisoned, or restrained of his liberty, for any alleged cause whatever, shall admit any practising attorney at law in this Territory whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned alone and in private, at the jail, or other place of custody. Any officer violating this provision shall forfeit and pay one hundred dollars to the person aggrieved, to be recovered by action of debt in any court of competent jurisdictior

SEC. 14. No attorney or co.. .llor at law or solicitor in chancery shall become security in any bond or recognizance of any sheriff, constable, or coroner, or in any bond or recognizance for the appearance of any person or persons charged with any public offence, or upon any bond or recognizance authorized by any statute to be taken for the payment of any sum of money into court in default of the principal, without the consent of the judge of the district court first had, approving said security.

SEC. 15. All attorneys and counsellors at law shall have a lien upon any money in their hands, or upon any judgment they may

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have obtained belonging to any client, for any fee or balance of fees due, or any professional services rendered by them in any court of this Territory, where said lien may be enforced by proper civil action.

SEC. 16. This act to be in force from and after its passage.

[Approved January 12, 1865.]

AN ACT to enable Soldiers to hold Claims

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That all citizens of the Territory who may hereafter enter the volunteer service of the United States, or militia service of this Territory, shall, during the time such persons are engaged in such service, and for six calendar months thereafter, have and enjoy the same rights to hold claims for agricultural, mining and other purposes, as citizens of this Territory who may not be in such service, and in the absence of any such person so engaged in such service, any such claim or claims may be held by the agent of such person in the same manner as if such person was personally present.

SEC. 2. This act to take effect from and after its passage.

[Approved January 17, 1865.]

AN ACT to preserve the District Records in relation to Leads, Lodes and Ledges.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That all mining district records, of all lead, lode, ledge, ranch, water or mill claims, that are now, or shall be, deposited within the next ninety days hereafter succeeding the passage of this act, in their respective county recorder's office, shall become a part and parcel of said county records, and shall be evidence in any court or courts of competent jurisdiction.

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SEC. 2. That it shall be the duty of all mining district recorders to file any and all records pertaining to all lead, lode, ledge, ranch, water and mill claims, in their respective county recorder's office, within ninety days from and after the passage, approval, and the printing in the "Montana Post," of this act; and upon failure to do so, they shall be deemed guilty of a misdemeanor, and upon conviction thereof may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

SEC. 3. That it shall be the duty of the county recorder, when any such district records are tendered him, to receive the same, and place them on file in his office; for which he shall receive a fee of fifty cents, to be paid by the district recorder; and upon his refusal to receive said district records, he shall be deemed guilty of a misdemeanor, and upon conviction thereof may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

SEC. 4. This act to take effect and be in force from and after its passage, approval, and ninety days after its its publication in the "Montana Post" three consecutive weeks: *Provided*, that nothing in this act shall be so construed as to admit any district recorder to deposit more than one set of books.

[Approved January 17, 1865.]

AN ACT relative to Elections.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That all white male citizens of the United States, and those who have declared their intention to become citizens, above the age of twenty-one years, shall be entitled to vote at any election for Delegate to Congress, and for territorial, county and precinct officers: *provided*, they shall be citizens of the United States, and shall have resided in the Territory twenty days, and in the county

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ten days, where they offer to vote, next preceding the day of election.

SEC. 2. No person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony or bribery in this Territory or in any other Territory or State in the Union, unless restored to civil rights, shall be permitted to vote at any election.

SEC. 3. A general election shall be held in the several townships or precincts in this Territory on the first Monday of September of each year, at which election shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for; the election for delegate and other officers as may be provided for, shall take place on the first Monday of September, A. D. 1865, and every two years thereafter.

SEC. 4. No person shall be eligible to the office of Delegate to Congress, member of the Council or House of Representatives, or any territorial office, unless he has been a resident of the Territory for one year.

SEC. 5. It shall be the duty of commissioners, at their regular session preceding the general election, to appoint three discreet and capable persons, possessing the qualifications of electors, to act as judges of election, in each township; and said commissioners shall also set off and establish townships or precincts when it may be necessary, and the clerk of said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed, and it shall be the duty of the said sheriff, within twenty days of the receipt of said notice, to serve the same upon each of the said judges of the election; if in any of the townships any of such judges do not serve, the voters of said township may elect a judge or judges to fill vacancies on the morning of the election, to serve at such election.

SEC. 6. The said judges shall choose two persons, having the same qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held in their respective townships, until other judges shall be appointed as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall, from time to

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time, fill such vacancies which may occur in the offices of judges of election in any township within their respective counties.

SEC. 7. The clerks of the several boards of county commissioners shall, at least thirty days before any general election, and at least fifteen days before any special election, make out and deliver to the sheriff of the county, or to a justice of the peace of any county attached for judicial purposes, three written notices for each township or precinct, said notices to be as near as circumstances will admit, as follows:

Notice is hereby given that on the first Monday of April or September, as the case may be, at the house of ———— in the county of ———, an election will be held for territorial, county, township or precinct officers, (naming the offices to be filled, as the case may be,) which election will be open at eight o'clock in the morning, and continue open until six o'clock in the afternoon of the same day.

Dated this———day of———A. D. 18——, as the case may be.

(Signed,) H. B.,

Clerk of the Board of County Commissioners.

SEC. 8. The sheriff aforesaid, to whom such notices shall be delivered as aforesaid, shall cause to be put up in three of the most public places of each township or precinct, the notices referring to the election in such township or precinct, at least ten days previous to the time of holding any general election, and at least seven days previous to holding any special election, and in cases where townships or precincts may be set off, by leave, as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the others at two most public and suitable places in the township or precinct.

SEC. 9. Previous to votes being taken the judges and clerks of election shall take and subscribe the following oath:

I, A. B., do solemnly swear or affirm that I will perform the duties of judge of the election (or clerk, as the case may be) according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

SEC. 10. In case there shall be no judges or justices of the peace present at the opening of the election, or in case such judge or justice of the peace shall be appointed judge or clerk of the

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election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other, and to the clerks of the election, and the person administering the oaths shall cause an entry thereof to be made, subscribed by him, and prefixed to the poll book.

SEC. 11. At all elections to be held under this act. the polls shall be opened at eight o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; and at the opening of the polls one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the polls proclamation shall be made in like manner, and the polls shall be closed in a half hour; but the board may in their discretion adjourn the polls at twelve o'clock at noon for one hour, proclamation of the same being made.

SEC. 12. It shall be the duty of the clerks of the several boards of county commissioners to furnish the sheriff with two poll books, who shall deliver the same to one of the judges of election in each township or precinct in the county at least five days before the time of holding any election.

SEC. 13. Every elector shall deliver, in full view of one of the judges of election, a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill. Said ballots may be open or folded as the voter may choose.

SEC. 14. The judges to whom any ticket may be delivered shall, upon the receipt thereof, pronounce with an audible voice the name of the elector, and if no objections be made to him, and the judges shall be satisfied that the elector is legally entitled to vote, he shall immediately put the ballot in the box, without inspecting the names thereon. If it be a folded ballot the clerk of the election shall enter the name of the elector and number in the poll book.

SEC. 15 It shall be lawful for any elector to vote for delegate to congress at any place of holding elections in this Territory, for members of the legislative assembly, and all other officers, at any place for holding elections within the particular limits for which such member of the legislative assembly and such other officers are

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to be elected. *Provided*, That an elector qualified to vote for part and not all of the officers to be chosen at any election shall vote an open ticket, that the judges may determine the legality of such vote.

SEC. 16. If any person offering to vote shall be challenged as unqualified by any judge or clerk of the election, or any other person entitled to vote at the same poll — and either judge may challenge any person offering to vote whom he shall know or suspect not to be qualified,— the judges shall declare to the person so challenged the qualifications of an elector; if such person shall then declare himself duly qualified, and the challenge be not withdrawn, one of the judges shall then tender him the following oath: You do solemnly swear (or affirm, as the case may be) that you are qualified, according to the law regulating elections in this Territory, to vote for the officer (or officers, as the case may be) for whom you now propose to vote. And the clerks shall enter the names of all persons on the poll lists who are challenged and take such oath, and shall enter opposite their names the word sworn, in brackets, and such records shall be presumptive evidence of such votes.

SEC. 17. There shall be provided and kept by the judges of each election precinct (at the expense of the county) a suitable ballot box, with a lock and key.

SEC. 18. There shall be an opening in the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls the ballot box shall be carefully examined by the judges of election that nothing shall remain therein; it shall then be locked and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purpose hereinafter mentioned.

SEC. 19. At such adjournment of the polls the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered according to the decision of the board, until such poll lists shall be made in all respects to correspond.

SEC. 20. The ballot box shall be opened and the poll books placed therein, and such box shall then be locked, and a covering with a seal placed on the lid of such box so as to entirely cover the

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same, and the key delivered to one of the judges and the box to another, to be designated by the board.

SEC. 21. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the care of the box shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly in that condition deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked.

SEC. 22. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and shall continue until completed.

SEC. 23. The canvass shall commence by a comparison of the poll lists from the commencement, and the correction of any mistakes that may be found therein, until they shall be found to agree; the box shall then be opened and the ballots found therein counted by the judges, unopened, except to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed, and if on a comparison of the count with the poll lists and the appearance of such ballots, a majority of the judges shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

SEC. 24. If the ballots in the box should be found to exceed in number the whole number of votes in the poll lists, they shall be placed in the box (after being purged after the manner above stated) and one of the judges shall publicly draw out and destroy therefrom so many ballots unopened as shall be equal to such excess.

SEC. 25. The ballots and the poll lists agreeing, or being made to agree, the board then shall proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the names of every person voted for, and at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made as near as circumstances will admit in the following form, to wit:

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At an election held at the house of A. B., in the township or precinct of ———, in the county of ———, and in the Territory of Montana, on the —— day of ———, A. D. 18—, the following named persons received the number of votes annexed to their respective names for the following described offices, to wit:

A. B. had ——— votes for delegate to Congress.
C. D. had ——— votes for Territorial treasurer.
E. F. had ——— votes for Territorial auditor.
G. H. had ——— votes for Territorial superintendent of public instruction.
J. D. had ——— votes for member of legislative council.
R. L. had ——— votes for member of house of representatives.
(And in like manner for any other person voted for.)

Certified by us. Attest:

A. B. and C. D. } Clerks of Election. M. N. O. P. Q. R. } Judges of Election.

SEC. 26. The judges of election shall then enclose and seal one of the poll books under cover, directed to the clerk of the board of commissioners of the county in which such election was held; and the packet thus sealed shall be conveyed by one of the judges or clerks of the election, to be determined by lot if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and be delivered to the said clerk of the board of county commissioners at his office within ten days from the closing of the polls; and the other poll book, together with the ballot box, deposited with one of the judges of election, to be determined by lot if not otherwise agreed upon, and the said book shall be subject to the inspection of any elector at any time thereafter who may wish to examine the same. The returns of elections in unorganized counties shall be made to the clerk of the county to which they are attached for judicial purposes.

SEC 27. If any person, after being deputed by the judges of election to carry the poll books of such election to the clerk of the county, shall fail or neglect to deliver such poll books to the said clerk within the time prescribed by law, safe with the seal unbroken, he shall, for every such offence, and when convicted thereof, pay the sum of five hundred dollars and be imprisoned in the county jail until such fine is paid for the use of the county, the same to be

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recovered by a civil action in the name of the county commissioners, in the district court.

SEC. 28. After the tenth day after the close of any election, or sooner if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, or any two county officers, shall proceed to open the returns and make abstracts of the votes. Such abstracts of votes for delegate to Congress shall be on one sheet; the abstracts of votes for members of the Legislative Assembly shall be on one sheet, and the abstracts of votes for Territorial and district officers shall be on one sheet; and the abstract of votes for county and township officers shall be on another sheet; and it shall be the duty of such clerk of the board of county commissioners immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and township officers respectively, and to deliver such certificate to the person entitled to it unless making application to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons for the Council or House of Representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days notice; and it shall be the duty of the clerk of the board of commissioners of such county, on receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election shall be entitled for their services, and lay the same before the county commissioners at their next session, and the board of commissioners shall order the compensation aforesaid to be paid out of the county treasury.

SEC. 29. The clerk of the board of county commissioners, immediately after making out the abstract of votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail, express or special messenger, to the secretary of the Territory at the seat of government, and it shall be the duty of the secretary of the Territory, with a marshal of the Territory or his deputy, in the presence of the governor, to proceed within thirty days after the election, and sooner if the returns be received, to canvass the votes given for delegate to Congress, and the governor shall grant a certificate of election to the person having the highest

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number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of two or more persons having an equal and highest number of votes, then the governor shall by proclamation order a new election.

SEC. 30. If the returns of the election of any county in this Territory shall not be received at the office of the secretary of the Territory within thirty days after the election, the said secretary shall forthwith send a messenger to the clerk of the county commissioners, whose duty it shall be to furnish the said messenger with a copy of such returns, and the said messenger shall be paid out of the county treasury of the said county, the sum of thirty cents for each mile he shall necessarily travel in going to and returning from said county.

SEC. 31. Any person who shall receive a certificate of his election, shall be at liberty to resign such office, though he may not have entered upon his duties or taken the requisite oath of office, and when any vacancy shall happen in the office of member of council or house of representatives by death, resignation or otherwise, and a session of the legislature is to take place before the next annual election, the governor shall issue a writ of election directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district to hold a special election to fill such vacancy or vacancies at a time appointed by the governor.

SEC. 32. Where two or more counties are united in a council or representative district, or for the election of any officer, the clerk of the board of the county commissioners of the county or counties last established shall, on the twentieth day after the election unless a previous time is agreed upon, attend at the office of the clerk of the board of the senior county, and together they shall canvass the votes according to law, and the certificate of election shall be signed by such clerk and be delivered to the proper person at the office of the clerk of the senior county, and, for the purpose of this act, the the county first created shall be deemed the senior county, and when all the counties were created by the same act, the first named therein shall be deemed the senior county.

SEC. 33. There shall be allowed out of the county treasury of each county to the several judges and clerks of the election, five

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dollars per diem, and to the person carrying the poll books from the place of election to the clerk's office, and to the clerks of the board of county commissioners for attending at another county to canvass votes the sum of thirty cents per mile for going and returning, to be paid out of the county treasury.

SEC. 34. If any judge or clerk of election, or any other person in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this act, he shall pay to the county a sum not less than fifty or more than one thousand dollars, and be imprisoned in the county jail until such fine is paid, the same to be recovered by civil action in the name of the county commissioners of the proper county, for the use of the common schools of said county.

SEC. 35. The term of office of all officers elected shall begin on the first Monday in November next ensuing, unless some other express provision is made by law.

SEC. 36. In all elections, the person having the highest number of votes for any office shall be deemed to have been elected.

SEC. 37. In counting the votes, the judges of election shall disregard misspelling or abbreviation of the names of candidates for the offices, if it can be ascertained, from such votes, for whom they were intended.

SEC. 38. All contests of county and township officers shall be tried in the proper county, and when an elector shall wish to contest such election, he shall file with the clerk of the board of county commissioners, within ten days after such person shall have been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall issue to the contestant a notice to appear, at time and place specified in the notice, before the probate court, which notice, with a copy of such statement, shall be delivered to the sheriff, who shall, within five days, serve the same on the contestor by delivering to him a copy of such notice and statement, or by leaving such copy at his usual place of residence.

SEC. 39. The probate court, at the time specified in the notice, (and it shall appear by the sheriff's return that notice has been duly served on the contestor,) shall proceed to try such contest. Each party shall be entitled to subpœnas, and subpœnas *duces tecum*, as in ordinary cases at law, and the probate court shall hear

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and determine in such manner as shall carry into effect the expressed will of a majority of the legal voters as indicated by their votes for such office, not regarding technicalities, or error in spelling the name of any candidate for such office, and the clerk of said board shall issue a certificate to the person declared to be elected by said board, which shall be conclusive evidence of the right of said person to hold such office.

SEC. 40. This act shall not be construed so as to impair in any way the right of any person to contest any election in the manner authorized and provided by statute.

SEC. 41. Resignations shall be made as follows: First, By the Territorial officers and by all officers elected to the legislature, to the governor. Second, By all county officers, to the county commissioners of their respective counties Third, By all other officers holding office by appointment, to the body or officer that appointed them.

SEC. 42. Every office shall become vacant on the happening of any of the following events, before the expiration of the term of such office: First, The death of the incumbent. Second, His resignation. Third, His removal. Fourth, Ceasing to be an inhabitant of the Territory, county or township for which he shall have been elected or appointed, or within which the duties of his office are to be discharged. Fifth, His conviction of any infamous crime, or of any offence involving the violation of his official oath. Sixth, His refusal or neglect to take the oath of office, or to render his official bond, or deposit such oath or bond within the time prescribed by law. Seventh, The decision of a competent tribunal, declaring void his election or appointment.

SEC. 43. The governor shall also declare vacant the office of every official required by law to execute an official bond, when a judgment shall be obtained against such officer for a breach of the condition of such bond.

SEC. 44. When a vacancy shall occur during a recess of the legislature, in any office which the legislature is authorized to fill by election, or which the governor, subject to confirmation of legislative council, is authorized to fill, the governor, unless it be otherwise specially provided, may appoint some suitable person to perform the duties of such office.

SEC. 45. When at any time there shall be in any of the county

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or township offices, no officer, duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of such officer: *Provided*, That there is no board of county commissioners, the governor may, on notice of such vacancy, create or fill such board.

SEC. 46. Every person so appointed in pursuance of the last two preceding sections shall, before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place they shall be appointed, and they shall continue to exercise and perform the duties of the office to which they shall be appointed, until such vacancy shall be regularly supplied as provided by law.

SEC. 47. This act shall be in force, and take effect from and after its passage.

[Approved January 17, 1865.]

AN ACT for the protection of Roads.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That if any person, mining, ditch or milling company, shall, by virtue of any charter or law granted or made for mining, milling, irrigating or other purposes, dam the waters of any stream in this Territory, so that the water thus dammed shall overflow any wagon or other road, situated on the margin or banks of said stream, or so as to cause the said road to become undermined, weakened or damaged, the said person, company or corporation shall rebuild or repair said road at their own expense; the said road to be accepted by the county commissioners of the county in which said road is located.

SEC. 2. Any person, company or corporation violating the first section of this act, shall be liable to a fine, not exceeding five hundred dollars, nor less than ten dollars, to be recovered by action of debt, in any court having competent jurisdiction in this Territory.

SEC. 3. That fines accruing by the provisions of this act, shall

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be paid into the county treasury for the use of the common schools of this Territory.

SEC. 4. This act to take effect, and be in force, from and after its passage.

[Approved January 20, 1865.]

AN ACT concerning weights and measures.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, shall be deemed the lawful standard weights and measures of the people of this Territory.

SEC. 2. The "ton" shall be twenty hundred pounds weight avoirdupois, except in the article of mineral coal, when it shall be deemed to express the conventional quantity of twenty-eight bushels.

SEC. 3. Sixty pounds of wheat, fifty-six pounds of rye, fifty-six pounds of Indian corn, forty-eight pounds of barley, thirty-five pounds of oats, sixty pounds of potatoes, sixty pounds of beans, sixty pounds of clover seed, forty-five pounds of timothy seed, forty-four pounds of hemp seed, fifty-two pounds of buckwheat, fourteen pounds of bluegrass seed, fifty pounds of corn meal, fifty-seven pounds of onions, and fifty pounds of turnips, carrots, beets, and parsnips each, salt, fifty pounds, respectively, shall be the standard weight of a bushel of each of such articles.

SEC. 4. It shall be the duty of the treasurer of this Territory to procure as soon as possible from the department of the Federal Government all necessary weights and measures for the use of the Territory, and as soon as he shall receive them to give public notice, through one or more newspapers, for thirty days, to each and every board of county commissioners in the Territory to obtain copies or duplicates of said weights and measures.

SEC. 5. That all venders and traders in goods and merchandise, gold dust, and other articles of traffic, shall, within sixty days after

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the reception of the standard by said county commissioners, have their balances, weights, and measures compared with said standards of their respective counties, and approved and marked by the county inspector, and if the same are found to be correct, to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect.

SEC. 6. That on the first regular meeting of the board of county commissioners in each county in this Territory after the passage of this act, and thereafter annually on the first regular monthly meeting of every year; said county commissioners shall appoint a fit and proper person, who shall be styled "Inspector of of weights and measures," and give bond to the county for the faithful performance of the duties of his office, as said county commissioners may direct.

SEC. 7. That every board of county commissioners shall make out a list of fees to be charged by said inspector. Such fees shall be recoverable as other debts of like amount.

SEC. 8. That it shall be the duty of such inspector to provide at his own expense, all the necessary tools, marks and brands which he may require, and by reason thereof he shall receive no larger fee than he may be allowed in accordance with the preceding. Said fees shall be paid by the parties having weights and measures sealed and approved.

SEC 9. All persons who shall, after the expiration of the time before mentioned, in any county where such inspector shall have been appointed, use within this Territory for the purpose of weighing or measuring any goods, wares, merchandise, gold dust or other article of traffic actually sold by him, any weights or measures which shall not be approved and sealed by the inspector, shall be guilty of a misdemeanor, and upon conviction thereof may be imprisoned not exceeding one year, or fined not exceeding one thousand dollars, in the discretion of the court in which the conviction shall be obtained.

SEC. 10. Whenever it shall come to the knowledge of the inspector that any person or persons within his county have violated any of the provisions of this act, it shall be his duty to enter a complaint against him or them, before some court of competent jurisdiction, to the end that the offender may be punished and fined according to law.

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SEC. 11. All fines imposed and collected for violation of the provisions of this act, shall be paid into the county treasury for the use of the people of the county in which the offence has been committed.

SEC. 12. This act shall take effect and be in force from and after its passage.

[Approved January 24, 1865.]

AN ACT concerning the construction of Statutes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. In the construction of all statutes the following rules shall be observed, unless such construction shall be manifestly inconsistent with the intent of the legislature, or repugnant to the context of the same statute, that is to say: First, All words and phrases shall be understood and construed according to the approved and common usage of the language, but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning, shall be construed and understood according to such peculiar and appropriate meaning. Second, Every word imparting the singular number only, may extend and be applied to one person or thing, or to several persons or things, and every word imparting the masculine gender only, may extend and be applied to females as well as males; and when it says executor, it may mean executrix, and when it says administrator, it may mean administratrix. Third, The words "insane person" shall be construed to include every idiot, *non compos*, lunatic, or distracted person. Fourth, The word "issue," as applied to descent of estate, shall be construed to include all the lawful lineal descendants of the ancestor. Fifth, The words "land or lands" and the words "real estate" shall be construed to include lands, tenements and hereditaments, and all rights thereto, and all interests therein. Sixth, The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, unless otherwise expressed. Seventh, The word "oath" shall be construed to include affirmation,

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and the word "sworn" to include affirmed. Eighth, The word "person" may extend and be applied to bodies politic and corporate. Ninth, The words "town or towns" may be construed to include city or cities. Tenth, The word "will" shall be construed to mean codicil as well as will. Eleventh, The words "written or in writing" may be construed to include printing or engraving. *Provided*, That in all cases where the written signature of any person is required by law, it shall always mean the proper handwriting of such person, or, in case he is unable to write, his proper mark. Twelfth, The word "State," when applied to different parts of the United States, may be construed to include the District of Columbia and the Territories. Thirteenth, The term "court" shall, in all necessary cases, be deemed to refer as well to probate judges and justices of the peace as to courts of record.

SEC. 2. No act or part of an act repealed by another act shall be deemed to be revived by the repeal of the repealing act.

SEC. 3. All general provisions, terms, phrases, and expressions used in any statute, shall be liberally construed, in order that the true intent and meaning of the legislative assembly may be fully carried out.

SEC. 4. Every act which does not fully prescribe the time when it shall go into operation shall take effect from and after its passage.

SEC. 5. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect; and whenever the word "hereafter" occurs it shall be construed to mean the time after the statute containing the term shall take effect.

SEC. 6. When any subject, matter, party, or person, is described or referred to, by words imparting the singular number, or the masculine gender, several matters, and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

SEC. 7. The rules prescribed in the last two sections shall apply in all cases, unless it be otherwise especially provided, or unless there be something in the subject or context repugnant to such construction.

SEC. 8. No action, plea, prosecution, civil or criminal, pending at the time any statutory provision shall be repealed, shall be affected by such repeal, but the same shall proceed in all respects

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as if such statutory provisions had not been repealed, except that all such proceedings had after the taking effect of any statute passed at this session shall be conducted according to the provisions of such statute, and shall be in all respects subject to the provisions thereof, so far as they are applicable.

SEC. 9. In publishing the acts of the legislative assembly, the enacting clause, the signature of the speaker of the house or representatives, the president of the council, and the governor, shall be omitted, but the date of their approval shall be retained.

SEC. 10. This act shall take effect, and be in force, from and after its passage.

[Approved January 24, 1865.]

AN ACT to provide increased Compensation to Officers in this Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The salaries of the following officers are hereby increased, in addition to the sums already provided by the United States government, as follows:

To the governor and each of the justices of the supreme court, the sum of twenty five hundred dollars. *Provided*, That in no case shall the additional salary be paid for any quarter during which the officer claiming the same shall not have been in the Territory at least a portion of the quarter.

SEC. 2 The per diem compensation of the members and officers of the legislative assembly is hereby increased, in addition to the compensation provided by the United States government, as follows:

To each member of the assembly the sum of twelve dollars.

To each of the chief clerks, assistant clerks, enrolling and engrossing clerks, the sum of eleven dollars; to each of the assistant clerks, not provided for in the organic act of this Territory, the sum of twelve dollars; to each of the sergeants at arms the sum of nine dollars; to each fireman the sum of twelve dollars; to each of the door keepers the sum of seven dollars; to each page em-

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ployed by the legislative assembly five dollars; the chaplain five dollars.

SEC. 3. The several sums appropriated in section one of this act to the officers therein named, shall be considered as due as follows: The first quarter shall commence at the date of the commission of each officer, and any officer who shall not have been in the Territory at the end of the first quarter, shall draw no money from the Territorial treasury for that quarter, or any other quarter during the whole continuance of which quarter he was absent from the Territory; but to those officers who shall have one or more quarter's salary due them, the first payment shall be made on the first Monday in March, A. D. 1865, and quarterly thereafter, and the Territorial auditor shall issue his warrant on the Territorial treasury in accordance therewith.

SEC. 4. The several sums appropriated in section two of thi act to the officers therein named, shall be due and payable at the end of each week of their several sessions, commencing with the present session, out of any moneys not otherwise appropriated, and the Territorial auditor shall issue his warrant to the Territorial treasurer in accordance herewith.

SEC. 5. In addition to the sums appropriated in sections one and two of this act, each member of the legislative assembly, and each clerk or employe who shall not reside at the Territorial Capital, shall receive twenty-five cents for each mile travelled in going to and returning from the session of the legislature, estimated according to the nearest usually travelled route, and the Territorial auditor shall issue his warrant on the Territorial treasurer in accordance herewith.

SEC 6. This act shall be in force from and after its passage and approval by the governor.

[Approved January 24, 1865.]

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AN ACT concerning Guardians and Wards.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Courts of probate in their respective counties shall admit orphan minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under fourteen years of age.

SEC. 2. Whenever it shall be represented to the said court that any orphan minor above the age of fourteen years has no guardian, it shall be the duty of said court to issue a notification to such minor to appear before said court, at a time therein specified, and choose a guardian, and if such minor refuse or neglect to appear, or appearing shall still neglect to choose a guardian, the said court shall appoint one for such minor, as if such minor was under the age of fourteen years.

SEC. 3. When a minor having a father living shall be entitled to or possessed of any estate real or personal not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor shall not be appointed, and if sufficient reason be not shown, may appoint the father if he be a proper person, if not, then such other person as the minor, if of the age of fourteen years, may choose. If such minor refuse or neglect, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor, and when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

SEC. 4. Guardians, by virtue of their office as such, shall be allowed in all cases to prosecute and defend for their wards.

SEC. 5. The court of probate shall take of each guardian appointed under this act, bond with good security, in a sum double the amount of the minor's estate real and personal, conditioned as follows: The condition of this obligation is such, that if the above bondsman A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian ac-

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cording to law, and shall render a fair and just account of his guardianship to the probate court for the county of ———— from time to time, as he shall be required by said court, and comply with all the orders of said court, lawfully made, relative to the goods, chattels, moneys and estate of such minor, and render and pay to such minor all moneys, goods and chattels, title papers and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such court so direct, then the obligation shall be void; otherwise to remain in full force and virtue: Which bond shall be taken in the name of the Territory of Montana, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time, against all or any one or more of the obligations, in the name and for the use and benefit of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon.

SEC. 6. Courts of probate, in their respective counties, shall have power, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time to render their respective accounts upon oath touching their guardianship to said courts for adjustment, and shall have power to compel such guardians to give supplementary security, whenever it shall seem proper, and in default thereof to remove such guardians.

SEC. 7. The court of probate in all cases shall have the power to remove guardians for good and sufficient reasons, which shall be entered upon the records, and to appoint others in their places, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties, as heretofore prescribed in this act, and when any guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian so removed, or executors or administrators of a deceased guardian, to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or on any other person or persons who may have the same, and upon failure, to commit the party so offending to prison until he, she, or they, comply with the order of the court.

SEC 8. Guardians shall have the power to demand, sue for and

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receive all moneys belonging to their wards from executors or administrators as soon as the same may be collected, or of any other person or persons, in whose hands or possession the same may be, and it shall moreover be their duty to put to interest the moneys of their ward upon mortgage security to be approved by the court, which letting shall always be for one year, and at the end of each year, the interest shall be added and made part of the principal, and said guardian shall always have power to lease the real estate of the ward, upon such terms and for such length of time as the court of probate shall direct: *Provided*, Such leasing shall not be for a longer time than during the minority of the ward; and the minority of females shall cease at the age of eighteen years.

SEC. 9. The guardian shall have power under the direction of the court of probate, to superintend the education and nurture of the ward, and for that purpose may pay out such portion of the ward's money, as the court of probate shall from time to time by order direct: *Provided*, That the rents and profits arising from his estate, and the nett interest on the ward's money, shall always be first resorted to, for the education and nurture of the ward.

SEC. 10. The district court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all of the personal estate, order the sale of the real estate of the ward, on the application of the guardian by petition in writing, stating the facts, and having given notice to all persons concerned of such intended application in some newspaper printed in the Territory, or by posting up written notices in three of the most public places in the county, at least three weeks before the sitting of the court. Such order may enable the guardian to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estate; the court, in such order, shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security from the guardian and purchaser as the interest of the ward may require; it shall be the duty of the guardian making such sale, as soon as may be, to return such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchaser all the interest the ward had in the estate so sold. Application for the sale of such real estate shall be made to the

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court of the county where the whole or a part of the estate shall be situated.

SEC. 11. An account of all moneys received by any guardian for any sale of real estate of any minor, as aforesaid, shall be returned on oath by such guardian to the court of probate of the county where letters of guardianship were obtained, and such moneys shall be accounted for, and shall be subject to the order of the probate court in like manner as other moneys belonging to such minor.

SEC 12. Appeals shall be allowed in all cases from the order of judgment of the court of probate to the district court.

SEC. 13 Minors may bring suits in all cases whatever by any person they may select as their next friend, and the person so selected shall file bond with the clerk of the district court, or justice of the peace where the suit may be brought, acknowledging himself bound for all costs that may accrue and legally devolve on such minor. After such bond shall have been so filed, said suit shall progress to the final judgment and execution, as in other cases.

SEC. 14. Guardians shall educate their wards; and it is hereby made the duty of all civil county officers to give information to the court of probate of neglect or omission of any guardian to his or her ward. *Provided*, That when there are not moneys sufficient to teach the ward to read and write, and the ground rules of arithmetic, and the guardian refuses or neglects to have him so educated, the court shall have power to put out to any other person the ward, for the purpose of having him or her so educated. The judges of probate shall in all cases, when information is made of the neglect of any guardian to educate his or her ward, and on the facts being established, to remove such guardian, and appoint a suitable person to act as guardian, to superintend the education of such minor orphan.

SEC. 15. Guardians shall have the power to loan out the moneys of their wards in sums not exceeding one hundred dollars, on personal security, to be approved by the judge of probate; *Provided*, It shall not be let for a longer time than twelve months without a renewal, and an approval of the security by the court, and if neglected longer it shall be at the responsibility of the guardian. In all cases of any person being appointed guardian for

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more than one ward at one time, the judge of probate shall include all in one bond.

SEC. 16. Guardians, on final settlement, shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are allowed by law to administrators.

SEC. 17. Every father of sound mind and memory, of a child likely to be born, or of any living child under the age of twenty-one years, and unmarried, may by his last will or deed, duly executed, dispose of the custody and tuition of such child during its minority, or for a less time, to any person or persons in possession or remainder; and every mother of sound mind and memory, being sole parent, may in like manner dispose of the custody and tuition of a child living, if a father has made no such disposition, or in any other manner restrained the right of the mother.

SEC. 18. Every such disposition, from the time it shall take effect, shall invest in the person or persons to whom it shall be made all the rights and powers and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody or tuition of such minor. *Provided*, The rights, powers, duties, and obligations of such person or persons may be restrained and regulated by the person making such deed or last will as aforesaid.

SEC. 19. Any person to whom the custody and tuition of such minor is disposed of, may take the custody and tuition of such minor, and maintain all proper actions for the wrongful taking and detention of the minor; he shall also take the management of the real and personal estate of such minor, unless restrained by the deed or will as aforesaid, during the time for which such disposition shall have been made, and bring such actions in relation thereto as a guardian appointed under the provisions of the laws of this Territory.

SEC. 20. Guardians appointed under the provisions of this act shall be subject to removal upon complaint of any person, in behalf of the minor, to the district court of the county in which such guardian may reside, and proof made of mal-conduct or misbehavior in the performance of his duties; and upon the removal of a guardian, the said court is hereby vested with the power to appoint another guardian, and make all such orders as may be necessary to

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compel the guardian to deliver over to his successor the custody of the minor, and to account for the estate, and pay over all moneys belonging to the ward, and to compel such successor to execute a bond, with good security, in such penal sum, and with such conditions, as the court may deem necessary for the security of the rights of the minor; and the said court shall also have power, upon application of any person in behalf of the minor, to require all guardians appointed under the provisions of this act, by the father or mother, or by the court, to give bond and security in such penalty and on such conditions as the court may deem necessary for the security and protection of the minor and of his or her estate.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved January 24, 1865.]

AN ACT to authorize the appointment of Commissioners of Deeds.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the governor of this Territory may appoint and commission in any State or Territory of the United States one or more commissioners of deeds, to continue in office during the pleasure of the governor, who shall have power to administer oaths and take depositions, and the proof and acknowledgement of deeds, and other instruments, to be used or recorded in this Territory.

SEC. 2. Before any such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath before some officer authorized to administer oaths in the State or Territory for which he is appointed, that he will faithfully discharge the duties of his said appointment, which oath, together with an impression in wax of his seal of office, shall be filed in the office of the secretary of this Territory.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved January 28, 1865.]

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AN ACT relating to the Printing of the Laws and Journals of the Council and House of the first Legislative Assembly of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the secretary of the Territory of Montana, or the governor, in case of the absence or inability of the secretary, shall be, and is hereby requested and empowered to procure, at as early a day as practicable after the adjournment of the legislative assembly, the printing, stitching, and binding, with paper cover, three hundred copies of the laws, memorials, and resolutions passed at the first legislative assembly of the Territory of Montana; also, fifty copies of the journals of each house of the legislative assembly, at the same time and in the same manner that the laws, memorials, and resolutions are to be printed, stitched, and bound, with proper indexes to each and every copy thus published and bound.

SEC. 2 That the person who shall, in accordance with the preceding section, perform the duty assigned, may, and is hereby authorized to make such alterations in orthography, grammatical construction, and punctuation of said laws as he may deem necessary to complete the sense of the same, including any such alterations so required to be made in brackets when printed.

SEC. 3 That the printed volumes of laws, aforesaid, shall be prefaced by the "Declaration of Independence," the "Constitution of the United States," the "Organic Act," of Montana Territory, and the pre-emption and homestead laws of the United States.

SEC. 4. The members of the present legislative assembly of the Territory of Montana shall be entitled to and receive each two copies of the laws, and three copies of the journals of either house of said legislative assembly; and it shall be the duty of the secretary or governor — as the case may be — to furnish the said members the said copies of laws and said copies of journals to which they are entitled by this act as soon as practicable after publication.

SEC. 5. That this act shall take effect and be in force from and after its passage and approval by the governor.

[Approved January 31, 1865.]

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AN ACT to provide for issuing and serving certain legal processes on Sunday.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That in all cases where writs of attachment or replevin may now lawfully issue, the same may be issued and served on Sunday; *Provided*, That the petition asking for the writ shall state, in addition to the facts now by law required to be stated, that the affiant believes he will lose his claim or property unless process issue on that day.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved January 31, 1865]

AN ACT concerning the location of Tunnels.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That if any person or persons shall locate a tunnel claim for the purpose of discovery and mining, he or she shall record the same, specifying the place of commencement and the course thereof, with the names of the parties interested therein.

SEC. 2. That any person or persons so pre-empting any tunnel have the exclusive right to three hundred feet on each side from the centre of said tunnel on any and all lodes that he or they may discover in the course of said tunnel: *Provided*, That none of said lodes, leads, or ledges were discovered and recorded previous to the pre-emption of said tunnel, in accordance with an act passed by the legislative assembly of the Territory of Montana, entitled, "An act relating to the discovery of gold and silver quartz leads, lodes, or ledges, and the manner of their location."

SEC. 3. That any person or persons who may work any tunnel

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or tunnels shall have the right of way through any and all lodes, leads, or ledges that may lie in the course of any of said tunnels; *Provided*, That all quartz ore or mineral taken from said tunnel from leads, lodes, or ledges belonging to parties other than the said tunnel company, shall be deposited on the surface by said tunnel company and belong to the original occupants or owners of said lead, lode, or ledge.

SEC. 4. That in order to hold any tunnel claims to the use of themselves, their heirs and assigns, they shall, before the expiration of one year from the date of pre-emption, run to the distance or depth of one hundred feet on said tunnel.

SEC. 5. That any person or persons who shall pre-empt any tunnel claim shall be entitled to three hundred feet on each side of the mouth of said tunnel for the purpose of a quartz or ore yard.

SEC. 6. This act to take effect and be in force from and after its passage.

[Approved January 31, 1865.]

AN ACT concerning Marks and Brands.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That any person desirous of securing the exclusive use of a particular mark or brand, shall have the exclusive right to use the same for the marking of his or her cattle, horses, mules, asses, hogs, and sheep in the county in which he or she resides, on complying with the provisions of this act.

SEC. 2. Such person shall make and sign a description of the mark or brand which he or she may wish to adopt, and cause the same to be recorded in the office of the county clerk of the county in which he or she resides, and the same description shall not be recorded for more than one resident of the same county.

SEC. 3. If any person shall wilfully mark any of his or her cattle, horses, mules, asses, hogs, or sheep, with the same mark or brand previously recorded by any resident of the same county, and while the same mark shall be used by such resident, the person so

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offending shall forfeit for every such offence the sum of ten dollars, to be recovered before any justice of the peace, or court having competent jurisdiction. If any person shall wilfully mark or brand the cattle, horses, mules, asses, hogs, or sheep of any other person with his own brand or mark, or shall wilfully deface, destroy, or alter such mark of any other person, he or she shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be fined in any sum not exceeding five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than one year.

SEC. 4. That nothing herein shall be so construed as to prevent one person from using the brand of another person, with their consent first obtained.

SEC. 5. All fines and penalties incurred by the provisions of this act shall be paid into the county treasury for the use of common schools.

SEC. 6. All laws or parts of laws conflicting with this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

[Approved February 1, 1865.]

AN ACT concerning Jails and Prisoners thereof.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be built or provided, and kept in good repair, in each county, one common jail, at the expense of the county.

SEC. 2. The county commissioners shall have the care of building, inspecting and repairing such jail, and shall, once every three months, inquire into the state, as respects the security thereof, and the treatment and condition of prisoners, and shall take all necessary precaution against escape, sickness or infection.

SEC. 3. The sheriff shall have the custody of the jail in his county, and of the prisoners therein, and shall keep the same, per-

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sonally or by his deputy, for whose debts he shall be responsible, and shall furnish, at the expense of the proper county, all necessary sustenance, bedding, clothing, fuel, and medical attendance for the prisoners committed to his custody, and the county commissioners shall allow him reasonable compensation out of the county treasury, not exceeding three dollars per day for the support of all prisoners confined on criminal process.

SEC. 4. The sheriff may appoint a jailer, who, in the absence or disability of the sheriff, shall have the custody of the jail and the prisoners.

SEC. 5. In case of the death, resignation or removal of the sheriff, the person provided for by law to supply his place, shall have charge of the county jail of his proper county, and all persons by law confined therein, and such sheriff or other officer is hereby required to conform in all respects to the provisions of this act.

SEC. 6. If any sheriff or jailer shall defraud any prisoner of his allowance, or shall not provide a reasonable allowance and accommodation, he shall forfeit fifty dollars for each offence, to be recovered by an action for debt by the county commissioners for the use of the county.

SEC. 7. The sheriff, or other officer performing the duties of sheriff, shall, five days previous to the opening of the district court in the district in which his county is situated, return to the commissioners of his county a certified list of the names of all prisoners then in his custody, with the time and cause of their confinement, and the length of the term for which they were committed, and he shall also return to said commissioners within five days after the close of said term of court, the name and cause, and term of commitment of every prisoner committed during said term of court, and any jailer who shall neglect to make such return, for every such neglect shall pay a fine not to exceed fifty nor less than twenty dollars, to be imposed at the next term of said court, on information of said commissioners of such neglect, and such fine shall go to the county.

SEC. 8. Persons may be committed under the authority of the United States to any jail in this Territory, upon payment of the expenses of supporting such prisoners, ten dollars per month to the county, for the use of the jail, and all legal fees to the jailer, and

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the sheriff shall receive such prisoners and subject them to the same discipline and treatment, and be liable for any neglect of duty, as in the case of other prisoners, but the county in no case shall be liable for the escape of such prisoner or prisoners.

SEC. 9. Whenever any prisoner under conviction for any criminal offence shall be confined in jail for any liability to pay any fine, forfeiture, or costs, or to procure sureties, the district court, upon satisfactory evidence of such inability, may in lieu thereof, confine such person in the county jail at the rate of five dollars per day until the forfeiture or costs so imposed shall be satisfied; and in such case the sheriff may procure chains for the safe keeping of such prisoner or prisoners, and hire out or put to labor such prisoner or prisoners, and shall charge the earnings of the same to himself for the sustenance of said prisoners, and any surplus that may accrue from such labor shall be paid into the county treasury to the credit of said prisoner.

SEC. 10. Whenever from any sufficient cause the sheriff shall think it expedient that the prisoner be removed from the jail of his county, on application in writing to the governor of the Territory by the sheriff and commissioners of such county, the governor may order such prisoner to be removed to some other jail, anywhere within the Territory, there to be detained in the same manner as in the jail from whence they were moved, until remanded back by a similar process, or discharged according to law.

SEC. 11. All the expenses of removing and maintaining prisoners, incurred under the preceding section, shall be defrayed by the county from which they were so removed.

SEC. 12. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 2, 1865.]

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AN ACT to prevent Officers from dealing in certain securities.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The Territorial treasurer and auditor, and the several county, city or town corporation officers in this Territory, are hereby expressly prohibited from purchasing or selling, or in any manner receiving to their use and benefit, or the use and benefit of any person or persons whatever, any Territory, county or town warrants, scrip, orders, demands, claim or claims, or other evidence of indebtedness against the Territory, or county, or any city or town thereof.

SEC. 2. The Territorial treasurer and auditor, and all county, city or town corporation officers, are prohibited from purchasing, or being interested in, or receiving, or selling, or transferring, or causing to be purchased, received, sold or transferred, either in person or by or through the agency or means of any person or persons whatever, any interest, claim, demand, or other evidence of indebtedness against the Territory, or any county, city or town corporation thereof, either directly or indirectly; nor shall any clerk or employe of any such officer or officers, nor the commissioners employed or to be employed to fund any county, city or town corporation indebtedness, be allowed to make any purchase, sale, or transfer, or bargain in any manner for any Territory, county, city or town corporation indebtedness, be allowed to make any such purchase, sale, or transfer, or bargain in any way or manner for any Territory, county, city or town corporation warrants, scrip, demands, or other evidences of indebtedness, against the Territory, or any county, city or town corporation thereof.

SEC 3. It shall be the duty of the Territorial treasurer, and the several county, city or town corporation treasurers of the Territory, to refuse to redeem any warrants against the Territory, or any county, city or town corporation thereof, when it shall come to their knowledge that such warrants, scrip or other evidences of indebtedness have been purchased, sold, received, or transferred, in violation of the provisions of this act.

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SEC. 4. All public officers herein referred to, shall have the right to sell or transfer any evidences of public indebtedness, which may be issued according to law and held by such officers for services rendered by them, to the Territory, county, or town corporation, legally and justly due, and this act shall not be deemed to prevent the purchase, sale and transfer of any funded public indebtedness whatever, of the Territory, or of any county, city or town corporation.

SEC. 5. It shall be the duty of any officer charged with the disbursement of any public moneys, or any evidences of public indebtedness, when he shall be informed by affidavit of the violation of any of the provisions of this act, by any officer or any agent or employe of said officer, whose account is to be settled, audited or paid by him, to withhold any settlement or payment of the same, and to cause said officer, or any agent or employe of said officer, to be prosecuted for a felony, and on conviction of any officer, or any agent or employe of said officer, guilty of any violation of the provisions of this act, he shall be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the Territorial prison, not less than two months. Such conviction shall operate as forfeiture of office, and the party convicted shall forever be disqualified from holding any office of trust or profit in this Territory. Any person giving information which may lead to the conviction of any person, under the provisions of this act, shall be entitled to one-fourth of any fine assessed upon and collected from any such officer, or agent or employe of said officer. The balance of said fines shall be paid into the county treasury of the several counties.

SEC. 6. This act shall take effect, and be in force, from and after its passage.

[Approved February 2, 1865.]

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AN ACT in relation to Trout Fishing.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That a fishing tackle, consisting of a rod or pole, line and hook, shall be the only lawful way that trout can be caught in any of the streams of this Territory.

SEC. 2. That said hook shall not be baited with any drug or substance poisonous to any kind of fish whatever.

SEC. 3. That it shall be unlawful for any persons or persons in the Territory of Montana to make any dams, or use any nets, seins, or any similar means for catching trout, or to use any drug or poison intending to catch, kill, or destroy any species of fish.

SEC. 4. Any person or persons offending against this act, on conviction thereof, shall forfeit and pay for every such offence a penalty of not less than fifty dollars nor more than two hundred dollars, to be recovered, with costs of suit, in civil action, in the name of the Territory of Montana, before any court having jurisdiction; one-half of the fine so collected shall be paid into the county treasury for the benefit of the common schools of the county in which the offence was committed, and one-half shall be paid to the person or persons informing the nearest magistrate that such offence has been committed. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail until such fine and costs shall have been paid.

SEC. 5. This act to be in force and take effect from and after its approval by the governor.

[Approved February 2, 1865.]

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AN ACT supplemental to an act entitled an act to provide for the Expenses of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The form of the warrants of the auditor drawn on the treasurer for the payment of money shall be as follows:

Warrant No. ——. TERRITORY OF MONTANA.
County of ———,
———— ——, 186—.

The treasurer will pay to ————————————, or order, ——— $\frac{}{100}$ dollars out of any money in the treasury not otherwise appropriated.

———— ————,
$\$$——— *Territorial Auditor.*

Presented for payment, ———— ——, 186—.
———— ————,
Territorial Treasurer.

SEC. 2. All acts and parts of acts contravening section one of this act are hereby repealed.

SEC. 3. This act shall take effect from and after its passage.

[Approved February 3, 1865.]

AN ACT to authorize certain persons to solemnize Marriage.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Marriage, as far as its validity is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and the parties shall be of the age of majority.

SEC. 2. No marriage shall be contracted while either of the parties shall have a husband or wife living, nor between parties who

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are nearer of kin than second cousins, computing by the rules of civil law, whether by the half or whole blood.

SEC. 3. That marriages may be solemnized by any judge of a court of record, by any justice of the peace in the county or judicial district in and for which he is appointed or elected by the governor of this Territory, or by a minister of the gospel who may be settled over any congregation in this Territory as minister thereof.

SEC. 4. That every person solemnizing marriage shall make a record thereof, and within three months after such marriage, shall make out and deliver to the recorder of deeds of the county in which the marriage took place, a certificate, under his hand, of the following form, and deliver a copy to either or both of the parties, if requested.

SEC. 5. The certificate shall be in the following form:

TERRITORY OF MONTANA, }
County of ————, } ss.

This is to certify that the undersigned, a justice of the peace of said county (minister of the gospel, judge, etc., as the case may be), did, on the —— day of ————, A. D. 18——, join in lawful wedlock T——— B———— and M——— S————, with their mutual consent, in presence of P——— L———— and M——— M————, witnesses.

SEC. 6. All such certificates shall be filed and recorded by the said recorder, in a book to be kept by him for that purpose, and he shall receive a fee of one dollar from the person solemnizing said marriage, who shall be entitled to receive the same from the parties before the marriage.

SEC. 7. That every person solemnizing marriages, who shall neglect to make and deliver to the recorder a certificate thereof within the time above specified, shall forfeit for such neglect a sum not less than twenty nor more than fifty dollars; and every recorder who shall neglect to record such certificate, so delivered, shall forfeit the like penalty.

SEC. 8. That every person who shall wilfully make and deliver a false certificate of marriage, or pretended marriage, or undertake to join others in marriage, knowing he is not lawfully authorized so to do, or knowing any legal impediment to the proposed marriage, he shall, on conviction in any court of competent jurisdic-

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tion, be fined in a sum not exceeding five hundred dollars, and be imprisoned in the Territorial prison until such fine is paid.

SEC. 9. No marriage solemnized before any person professing to be a judge or justice or minister, shall be deemed or regarded void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

SEC. 10. The original certificate and record of marriage made by the judge, justice, or minister, as prescribed in this act, and the record thereof by the recorder of the county, or a copy of such record, duly certified by the recorder, shall be received by all courts, and in all places, as presumptive evidence of the fact of such marriage.

SEC. 11. Illegitimate children shall become legitimatized by the subsequent marriage of their parents with each other.

SEC. 12. All fines arising under this act, in consequence of a breach of this act, shall be paid into the county treasury for the use of common schools; and said fines shall be recovered by a civil action, to be brought by any person aggrieved or by the county treasurer.

SEC. 13. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 6, 1865.]

AN ACT defining the time for Acts and Joint Resolutions to take effect.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. All acts and joint resolutions which declare that they take effect from and after their passage and approval by the governor, are hereby declared to so take effect only at the seat of government; and in other portions of the Territory allowing fifteen miles from the seat of government for each day.

SEC. 2. All acts and joint resolutions which do not take effect

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from and after their passage and approval by the governor, shall take effect and be in force in all parts of this Territory upon the day named in such act or joint resolution.

SEC. 29. This act shall be in force from and after its passage.

[Approved February 6, 1865.]

AN ACT providing for the collection of the Revenue.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. An annual *ad valorem* tax of forty cents upon each one hundred dollars value of taxable property, for Territorial purposes, upon the assessed value of all property in this Territory not by this act exempted from taxation, is hereby levied and directed to be collected and paid; and upon the same property the board of commissioners of each county is also hereby authorized and empowered to levy and collect, annually, a tax for county expenditures, not exceeding one hundred cents on each one hundred dollars; for the support of the poor, not more than one mill on the dollar; and upon the same property the board of commissioners of each county is also hereby authorized and empowered to levy and collect such additional and special taxes as the laws of this Territory may authorize or require them to levy and collect. *Provided, however*, That whenever the board of commissioners levy any tax, they shall cause such levy to be entered on the record of their proceedings, and shall direct their clerks to deliver a certified copy thereof to the assessor and treasurer, each of whom shall file said copy in his office.

SEC. 2. Every tax levied under the provisions or authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday of June in each year on all property then in this Territory, and shall not be satisfied or removed until the taxes are all paid or the property has absolutely vested in a purchaser under a sale for taxes.

SEC. 3. All property, of every kind and nature whatsoever,

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within this Territory, shall be subject to taxation, except, First, All lands and lots of ground, with buildings, improvements, and structures thereon, belonging to the Territory, or any municipal corporation, or to any county of the Territory; and all lands belonging to the United States, or to this Territory; and all buildings and improvements belonging to the United States, or this Territory. Second, Court-houses, jails, town halls, houses occupied by fire and military companies, and their apparatus, and other public structures and edifices, and all squares and lots kept open for health or public uses, or for ornament, belonging to any county, city, town, or village in this Territory; public libraries, colleges, school-houses, and other buildings, for the purpose of education, with their furniture, libraries, and all other equipments, and lots or lands thereto appurtenant, and used therewith, so long as the same shall be used for that purpose. *Provided*, That when any of the property mentioned in this sub-division is private property, from which a rent or other valuable consideration is received for its use, the same shall be taxed as other property. Third, Public asylums, hospitals, poor-houses, and other charitable or benevolent institutions for the relief of the indigent or afflicted, and the lots or lands thereto appurtenant, with all their furniture and equipments; all grounds and buildings belonging to agricultural societies, so long as the same shall be used for that purpose only, and without pecuniary gain. Fourth, Churches, chapels, and equipments, and the lots of ground appurtenant thereto, and used therewith. *Provided*, Rent is not paid for such ground so long as the same shall be used for that purpose only, without yielding rent. Fifth, The buildings and lots of ground appurtenant thereto, and used therewith, owned and used by the order of "Free and Accepted Masons," the "Independant Order of Oddfellows," or by any benevolent or charitable society, except such buildings and lots of ground as are owned in connection with individual owners, then only to the extent owned by such orders or societies. Sixth, Cemeteries and graveyards, set apart and used for the purposes of interring the dead. Seventh, The property of widows or orphan children, not to exceed the amount of one thousand dollars to any one family. Eighth, Growing crops. Ninth, Mining claims. *Provided*, That all machinery used in mining claims, and all property and improvements appurtenant to or upon mining claims, which have an independent

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and separate value, shall be subject to taxation. Tenth, Tools of mechanics, farming tools of husbandmen, libraries of professional men and private citizens, household furniture of families or householders, which do not exceed in value, to each, the sum of one hundred dollars, and tools of miners which do not exceed in value, to each owner, the sum of fifty dollars.

SEC. 4. All other property, real and personal, within the Territory, is subject to taxation, in the manner herein directed, and this is intended to embrace improvements on lands and lots in towns, including lands bought from the United States, and from this Territory, and whether bought on a credit, or otherwise; ferry franchises, which, for the purpose of this chapter, are to be considered real property, ditches and flumes; horses, oxen, cows and calves, mules and asses, sheep, swine and goats; money in coin or gold dust, whether in possession or on deposit, and including bank bills, property or labor due from solvent debtors on contract or on judgment, and whether in this Territory or not, mortgages and other like securities, stock or shares in any bank or company incorporated or otherwise, and whether incorporated by this or any other Territory or State, and whether situated in this Territory or not, public stocks or loans; household furniture not otherwise exempt, including gold and silver plate, musical instruments, watches and jewelry; private libraries for their value over one hundred dollars; pleasure carriages, stages, hacks and other vehicles, for transporting passengers; wagons, carts, drays, sleds and every other description of vehicle or carriage, boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this Territory or not, if owned either wholly or in part, by persons who are inhabitants of this Territory: annuities, but not including pensions, from the United States or any of them, nor salaries nor payments expected for services to be rendered; and other property, not above exempted, although not herein specified.

SEC. 5. The term credit, as used in this act, includes every claim and demand for money, labor or other valuable thing; and every annuity, or sum of money receivable at stated periods, and all money in property of any kind, and secured, by deed, mortgage or otherwise. But pensions from the United States, or any of them, and salaries or payments expected, for services to be rendered, are not included in the above term.

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BY WHOM, WHEN, AND IN WHAT MANNER, PROPERTY IS TO BE LISTED.

SEC. 6. Every inhabitant of this Territory, of full age and sound mind, shall list all property, subject to taxation in this Territory, of which he is the owner, or has the control or management, in the manner hereinafter directed. But, the property of a ward is to be listed by his guardian; of a minor, having no other guardian, by his father, if living, if not, then, by his mother, if living, if not, then, by the person having the property in charge If a married woman, by her husband, but, if he be unable or refuse, by herself; of a beneficiary, for whom property is held in trust, by the trustee; and the personal property of a decedent, by the executor; of a body corporate, company, society or partnership, by its principal accounting officer, agent or a partner; property under a mortgage or lease, is to be listed by, and taxed to, the mortgageor, or lessor, unless it be listed by the mortgagee, or lessee.

SEC. 7. Commission merchants, and all persons trading and dealing on commission, and consignees, authorized to sell, when the owner of the goods does not reside in this Territory, are, for the purposes of taxation, to be deemed the owners of the property in their possession.

SEC. 8. All personal property is to be listed, assessed and taxed, in the county where the owner resides, on the first day of June of the then current year; but if the owner resides out of the Territory, it is to be listed and taxed where it may then be; and if the agent or person having charge of such property neglect to list it, he will be subject to the penalty hereinafter provided.

SEC. 9. All persons required to list property in behalf of another, shall list in the same county in which he would be required, if it were his own,—except as herein otherwise directed,—but he must list it, separately from his own, naming the person or estate, to whom or to which it belongs; but the undivided property of a person deceased, belonging to his heirs, with or without naming the several heirs.

SEC. 10. The property of corporations or companies constructing bridges, canals, ditches, flumes, railways, plank roads, grading roads, turnpiking roads, and similar improvements, shall be assessed

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to each corporation or company; and when any such stockholders are non-residents, their interests are to be taxed in this Territory, and in the county in which is either terminus of the structure in this Territory; and to that end, the assessor is directed to require the secretary or clerk,—or whatever officer of corresponding duties there may be—to render under oath, a list of the names and residences of such non-residents, and both the par value and the market value of such stock; but if such secretary or other corresponding officer does not reside in the Territory, the assessor or assessors may require the same of any officer residing in this Territory, and if such officer refuse, the shares of non-residents shall be assessed to the company or corporation, and may be ascertained in the best manner within the power of the assessor or assessors; in such case the county first listing or assessing is to levy and collect the tax.

SEC. 11. All taxable property is to be listed and valued, each year; and real property is to be assessed at its true value in money, at private sale; having regard to its quality, locality, natural advantages, the general improvements in the vicinity, and all other elements of its value.

SEC. 12. Depreciated bank-notes, and depreciated stock or shares in corporations or companies, may be listed, at their current value and rates. Credits shall be listed at such sum as the person listing them believes will be received, or can be collected; and annuities, at the value which the person listing believes them to be worth in money.

SEC. 13. In making up the amount of money and credits, which any person is required to list, he will be entitled to deduct from the gross amount, the amount of all bona fide debts, owing by him; but no acknowledgment of indebtedness, not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt, within the intent of this section; and so much only, of any liability of such person, as security for another, shall be deducted, as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay, on account of the inability of the principal debtors; and if there are other sureties, able to contribute, then so much only, as he in whose behalf the list is made will be bound to contribute; but no person will be entitled to a deduction, on account of an obligation of any kind,

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given to an insurance company, for the premium of insurance, nor on account of an unpaid subscription, to any institution or society; nor on account of a subscription to, or instalment, payable on the capital stock of any company or corporation.

SEC. 14. Any person owning, or having in his possession or control, within this Territory, with authority to sell the same, any personal property purchased either in or out of this Territory, with a view of being sold at an advance price, or profit; or which has been consigned to him, from any place out of this Territory, for the purpose of being sold within the same, shall be held to be a merchant, for the purposes of this chapter; such property shall be listed for taxation, and in estimating the value thereof, the merchant shall take the average value of such property, in his possession or control, during the year next previous to the time of listing, and if he has not been engaged in that business as long, then he shall take the average during such time as he may have been so engaged; and if he be commencing business, he shall take the value of the property at the time of listing.

SEC. 15. Any person who purchases, receives or holds personal property of any kind, for the purpose of adding to the value thereof, by any process of manufacturing, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer, for the purposes of this chapter, and he shall list for taxation the average value of such property in his hands, estimated as directed in the preceding section; but the value shall be estimated upon the materials only, entering into the combination or manufacture.

SEC. 16. The assessor of each county shall, on or before the first day of June in each year, leave with each resident in his county, of full age and sound mind, or at the usual place of residence, or at the office or other place of business of such person, a written or printed notice requiring him to make out and return to the assessor, by the twentieth day of the same month, a statement or list of his property which by law is subject to taxation; and the assessor shall leave a blank form, upon which said list may be made. If the statement be not returned to the assessor in due time, he is to call for the same, but if the person be prepared to render his list

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at the time the notice is left, it is the duty of the assessor to receive it at that time.

SEC. 17. The list shall contain: First, His lands, by township, range, section, and any division or part of a section; and when such part is not a congressional division or subdivision, some other description to identify it, and his town lots, naming the town in which they are situated, and their proper description, by number and blocks, or otherwise, according to the system of numbering in the town. Second, His personal property, by the following particulars:

Amount of capital employed in merchandise;
Amount of capital employed in manufactures;
Number and value of horses;
Number and value of mules and asses;
Number and value of oxen;
Number and value of cows and calves;
Number and value of sheep;
Number and value of swine;
Number and value of goats;
Number and value of carriages of every description;
Amount of money and credits;
Amount (in value) of clocks, watches, jewelry, and gold and silver plate;
Number and value of musical instruments;
Amount (in value) of taxable household furniture;
Amount in stock or shares in any corporation or company;
Amount (in value) of all other property not enumerated;
The number of polls.

SEC. 18. The above list of items may be diminished, or varied, or enlarged, by the census board, which shall consist of the county commissioners, the county clerk and treasurer, so as to obtain such facts as they may deem desirable.

SEC. 19. On or before the first day of June, in each year, the county commissioners shall provide the assessor with suitable blank forms, for the assessments, and such instructions as to insure full and uniform assessments and returns

SEC. 20. The list shall be signed and sworn to by the person making it, and the oath may be administered, either by the assessor or by any other officer authorized to administer oaths, and shall be

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certified by him; and the oath may be printed upon the blank forms, and shall be in substance as follows:

I, (A. B) solemnly swear that I have listed (above or within) all the land and all the personal property, money and credit, subject to taxation, owned or held by me, and which I am required by law to list, (in the proper cases, insert: as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor,) according to the best of my knowledge.

SEC 21. When any person required to render the above statement fails to do so from absence or sickness, and when any such person refuses so to do, or to take or subscribe the oath required, the assessor shall ascertain according to the best information he can obtain the number and value of the several species of property required, and to that end he is hereby authorized to examine on oath any person whom he supposes to have knowledge in relation thereto, and if any person refuses to testify, he shall forfeit the sum of five dollars, to be recovered by civil action, in the name and to the use of the county.

SEC. 22 The said statement shall be endorsed with the name of the person whose property is therein listed, and the assessor shall file them in alphabetical order, and return them to the county officer when he return his assessment roll, to be there preserved.

SEC. 23. All property is to be valued by the assessor, except such as is herein required to be valued by the owner.

SEC. 24. On or before the first day of July, annually, the assessor shall make out and deliver to the county clerk an assessment roll, containing in tabular form, and alphabetical order, the names of the persons and bodies in whose names property has been listed in his county, with the several species of property, and the value as hereinbefore indicated, with the column of numbers and values footed, and in a column to be provided for that purpose, he shall write the words "by the assessor," when the list was made by himself, together with the word "absent," or "sick," or the words "refused to list," or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it, and a neglect shall be taken as a refusal.

SEC. 25. The assessor shall take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment roll, which oath is to be in substance as follows:

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I, C. D., assessor of ——— county, solemnly swear that the value of all property, money, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is herein truly returned, as set forth in such statement: that in every case where I have been required to ascertain the amount or value of the property of any person or body, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that as I verily believe the full value thereof is set forth in the annexed return, and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

SEC. 26. Immediately after the assessment roll is corrected, the county clerk is required to make out an abstract thereof, containing the whole number of acres of land listed in the county; the total value of the town lots; the whole number of horses, and their total value; the whole number of mules and asses, and their total value; the whole number of cows, and their total value; the whole number of oxen, and their total value; the whole number of calves, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the whole number of musical instruments, and their total value; the total number and value of clocks, watches, jewelry, and gold and silver plate; the gross amount of all other property, with money and credits; which abstract the clerk is directed to transmit forthwith to the auditor of the Territory; but the census board is authorized to diminish or add to the above list, and to require such different and further matters to be returned as it deems advisable.

SEC. 27. The census board constitutes a board for the equalization of taxes for the Territory, and is authorized and required to examine the various assessments, so far as regards the Territorial tax, and equalize the rate of assessment on real estate in the different counties, whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

SEC. 28. Such equalization may be made by changing any of

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the assessments, or by varying the rates of taxation in any of the counties, as may be found most convenient; but in either case, the board is directed to preserve unchanged, as far as practicable, what would have been the aggregate amount of valuation had no such equalization been made.

SEC. 29. On or before the second Monday in July the Territorial auditor is required to transmit to the clerk of each county a statement of the changes, if any, which have been made in the assessment, and the rate of Territorial tax which is to be levied and collected within his county, which, however, shall not exceed three mills on a dollar of the valuation; and when the board fixes no different rate, the rate first mentioned in this chapter shall be levied.

SEC. 30. The county clerk and treasurer shall constitute a board for the correction of the assessment roll, and between the fifteenth and twenty-fifth days of July public notice shall be given by the board of correction of the time and place the same shall be corrected, and any person feeling aggrieved by anything in the assessment roll may apply to this board for the correction of any supposed error; and if any person returned as refusing to render a list, or to be sworn thereto, can show good cause, the penalty herein provided may be remitted.

SEC 31. On the fourth Monday of July the board of county commissioners shall levy the requisite taxes for the current year, and they may be levied at any time after the first day of July if the statement has been received from the census board.

SEC. 32. As soon as practicable after the taxes are levied the clerk shall make out a tax-list, in the tabular form and in alphabetical order, having distinct columns for lands, and for town lots, and for carrying out in a column by itself the amount of each different tax, and having one or more columns for delinquent taxes; but instead of a column for the amount of personal property, the word "personality" may be written across the columns after the name, and the amount carried into the column of value. Such list may be in the following form:

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Owners' Names.	Part of Section.	Section.	Township.	Range.	Acres.	Name of Town.	Lots.	Block.	Value.	County Tax.	Territorial Tax.	School Tax.	Road Tax.	

SEC. 33. An entry is required to be made upon the tax-list, showing what it is, and for what county and year it is; and the county clerk shall attach to the list his warrant, under his hand and official seal, in general terms, requiring the treasurer to collect the tax therein levied according to law, and no informality in the above requirements shall render any proceeding for the collection of taxes illegal. The clerk is required to cause the list to be delivered to the treasurer of the county by the fifteenth day of August, and take his receipt therefor, and such list is a full and sufficient authority for the collector to collect all taxes contained therein.

THE COLLECTION OF TAXES.

SEC. 34. The treasurer, on receiving the tax-list and warrant, shall proceed to collect the taxes therein levied, and the list and warrant shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is required to attend at his office during the month of August, after receiving

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the list; and the months of September, October, and November, to receive the taxes; and he is also authorized and required to collect as far as practicable the taxes remaining unpaid on the list of former years. It shall be the duty of the collector of taxes to visit each township or district in his county, to receive and receipt for taxes, and the taxes shall also be all collected and returned to the Territorial treasurer's office before the first day of October.

SEC. 35. Auditor's warrants are receivable for the full amount of taxes payable into the Territorial treasury, and county warrants are receivable at the treasury of the proper county for the ordinary county tax, and any poor-tax or poor-house tax; but money only is receivable for the school tax. Road taxes may be discharged, and road warrants received for their payments, as provided in the chapter relating to roads.

SEC. 36. When a Territorial, county, or road warrant is received by the treasurer, he is directed to endorse on it the amount for which it is received, and the date thereof, and from that date the warrant is to be regarded as cancelled, and cannot be reissued; but when the warrant amounts to more than is to be paid by the person presenting it, the treasurer will give him a certificate of the balance due him.

SEC 37. If on the assessment roll, or on the tax-list, there be an error in the name of a person taxed, the name may be changed, and the tax collected from the person intended, if he be taxable and can be identified by the treasurer or assessor; and when the treasurer, after the tax list is committed to him, ascertain that any land or other property is omitted, he will report the fact to the assessor, who, upon being satisfied thereof, will enter it upon his assessment roll, and assess the value, and the treasurer will enter it upon the tax-list, and collect the tax as in other cases.

SEC. 38. That no demand of taxes shall be necessary, but it is the duty of every person subject to taxation, to attend in such township or district, at the time and place appointed by the treasurer, between the first and twelfth days of August, and pay his or her taxes; and if any one neglect to pay it before the fifteenth day of September following the levy of the tax, the treasurer is directed to make the same by distress and sale of his personal property, except such as is exempt from taxation, and the list alone shall be a sufficient warrant for such distress.

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SEC. 39. When the treasurer distrains goods, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale, within five days after the day of taking, in the same manner that constables are required to do on execution, and the time of sale shall not be more than ten days from the day of taking, but he may adjourn the sale from time to time, for a period not exceeding three days, and shall adjourn once, at least, when there are no bidders; and in case of an adjournment, he shall put up notice thereof, at the place of sale, any surplus that may be remaining above the taxes, charges of keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account, in writing, of the sale and charges.

SEC. 40. If the treasurer be resisted or impeded in the execution of his office, he may require any suitable person or persons to aid him therein, and if any such person refuse to aid, he shall forfeit a sum not to exceed fifty dollars, to be recovered by civil action, in the name of the county; and the person resisting shall be liable as in the case of resisting the sheriff in the execution of civil process.

SEC. 41. On the first day of December, the unpaid taxes of the preceding year become delinquent, and shall draw interest at the rate of twenty-five per centum per annum, and taxes upon real property, are hereby made a perpetual lien thereupon, against all persons or claimants except the United States and this Territory.

SEC. 42. Before the first day of June, in each year, the treasurer is directed to offer at public sale, at the court-house in his county, all lands on which the taxes levied the preceding year still remain unpaid; but such sale shall not be void, if not made till after the day named.

SEC. 43. The treasurer shall continue to receive payments of all taxes, after the first day of December upon the above terms until paid by distress and sale.

SEC. 44. The treasurer shall give notice of the sale of real property, by publication thereof, once a week for four weeks, in a newspaper in his county, if there be one, (of weekly issue,) the first of which shall be at least four weeks before the sale, and by a written notice posted on the door of the court-house, or building commonly used therefor, for four weeks before sale, and if there be no such newspaper published in the county, the like notice shall be

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given by posting one written notice, the above length of time, in each civil township or precinct in which any land to be sold is situated, and one on the court-house-door. Such notice shall contain a notification that all lands on which the taxes of the preceding year (naming it) have not been paid, will be sold, and the time and place thereof, with a list of the lands. Ten per cent. upon the amount of the taxes due, shall be added, when lands are advertised.

SEC. 45. Such sale is directed to take place between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and be adjourned from day to day (Sundays excepted) until all the lands are sold.

SEC. 46. At the July session of the board of county commissioners, the treasurer is required to file in the county clerk's office a return of his sale of lands (retaining a copy in his office), showing the lands sold, the names of the owners, so far as known, the names of the purchasers, and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the service verified by an affidavit, and such certificate shall be in evidence.

SEC. 47. The person who offers to pay the amount due on any parcel of land, for the smallest portion of the same, is to be considered the highest bidder; and when such portion constitutes a half or more of the parcel, it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided in each case lengthwise, by a line parallel with the proper lines of the lots. If the portion taken be less than one-half of the tract, it is to be taken from the southeast corner, in a square form, as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications: The homestead is liable to be sold for no tax save that which is due on itself exclusively; and the above directions concerning the division of a tract of land shall be modified so as to meet this requirement; and to that end the quantity of land bid for may be obtained by drawing the division line in any direction or form, so as to avoid the homestead; and when the homestead constitutes a part of the tract sold, and is not yet ascertained, the court may, in the action hereafter authorized, at the the suggestion of either party, cause a proceeding to be had, similar to that required in relation to mechanic's liens. For the ascertainment of the homestead, and in all other cases of such sales, it may

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take the requisite order and proceedings to ascertain the land sold, and set it apart from the homestead.

SEC. 48. Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale, if the sale has not closed; and if it has closed, he may again advertise it, specifically and by description, by one written notice posted for two weeks in the civil township or precinct in which the land lies, and one such notice on the court-house; or the treasurer may recover the amount bid by civil action, brought in the name of the county, in the township or precinct where the county seat is situated.

SEC. 49. The county treasurer shall make out, sign, and deliver to the purchaser of any real property sold for the payment of taxes, as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser, as the same was described in record of sales, and also, how much, and what part of each tract or lot, was sold, and stating the amount of each kind of tax, interest and costs for each tract or lot for which the same was sold as described in the record of sales, and that payment had been made therefor. If any purchaser shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate. For each certificate so delivered, the purchaser shall pay a fee of one dollar to the county treasurer.

SEC. 50. Such certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee, or his legal representatives, all right and title of the original purchaser.

SEC. 51. Real property sold under the provisions of this act, may be redeemed at any time before the expiration of one year from the date of the sale, by the payment to the treasurer of the proper county,—to be held by him subject to the order of purchaser,—of the amount for which the same was sold, and thirty per cent. interest per annum, on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption is made, which fact may be shown by the treasurer's receipt: *Provided*, That if real property of any minor, married woman, or lunatic, be sold for taxes, the same may be redeemed at any time within one year, by the guardian or legal representatives.

SEC. 52. The county treasurer shall, upon application of any party to redeem any real property sold under the provisions of this

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act, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amounts, issue to such party a certificate of redemption, setting forth the facts of the sale, substantially as contained in the certificate of sale, the date of the redemption, the amount paid, and by whom redeemed; and he shall make the proper entries in the book of sale in his office.

SEC. 53. Immediately after the expiration of two years from the date of the sale of any lands for taxes, under the provisions of this act, the treasurer then in office shall make out a deed for each lot or parcel of land sold, and remaining unredeemed, and deliver the same to the purchaser, upon the return of the certificate of purchase. The treasurer is required to demand one dollar for each deed made by him, on such sale, but any number of parcels of land, bought by one person, may be included in one deed, as may be desired by the purchaser.

SEC. 54. Deeds executed by the treasurer shall be substantially in the following form:

Know all men by these presents, that whereas the following described real property, viz: (here follow the description) situated in the county of ————, and Territory of Montana, was subject to taxation, for (the year or years) A. D. ————, and whereas, the taxes assessed upon said real property for the (year or years) aforesaid, remained due and unpaid, at the date of the sale hereinafter named: and whereas, the treasurer of said county, did, on the ——— day of ———— A. D. 18——, by virtue of the authority vested by law (at an adjourned sale) the sale begun and publicly held on the ——— ———— A. D. 18——, expose to public sale at the (court-house, or office of the county treasurer) in the county aforesaid, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest and costs then due, and remaining unpaid, on said property; and whereas, at the time and place aforesaid, A. B., of the county of ———— and ——— of ————, having offered to pay the sum of ———— dollars and —— cents, being the whole amount of taxes unpaid on said property for (here follows the description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to the said treasurer, the said property was stricken off to him at that price; and whereas, the said A. B.

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did, on the ——— day of ———— A. D. 18——, duly assign the certificate of sale, of the sale of the property, as aforesaid, and all his right, title and interest to said property to E. F., of the county of ———— and ——— of ————; and whereas, two years have elapsed since the date of said sale, and the said property has not been redeemed therefrom, as provided for by law. *Now, therefore*, I, C. D., treasurer of the county aforesaid, for and in consideration of the said sum, to the treasurer paid, as aforesaid, and by virtue of the statute in such case made and provided, have bargained and sold, and by these presents do grant, bargain and sell unto the said A. B., his heirs and assigns, the real property last hereinbefore described, to have and to hold, unto him the said A. B., his heirs and assigns forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, C. D., treasurer as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name on this —— day of ———, 18——.

C. D., *Treasurer.*

TERRITORY OF MONTANA, }
———— County, } ss.

I hereby certify that before me ———— in and for said county, personally appeared the abovenamed C. D, treasurer of said county at the date of the execution of the above conveyance, and to me known to be the identical person whose name is affixed to, and who executed the above conveyance, as treasurer of said county, and he acknowledged the execution of the same to be his voluntary act and deed, as treasurer of said county, for the purposes therein expressed.

Given under my hand and seal this ——— day of ————, A. D. 18——.

SEC. 55. When by the mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, the county is to hold the purchaser harmless, by paying him the amount of principal and interest, to which he would have been entitled, had the land been rightfully sold, and the treasurer and his sureties will be liable for the amount, to the county, on his bond; or the purchaser may recover directly from the treasurer.

SEC. 56. The treasurer of each county shall pay into the Ter-

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ritorial treasury all funds in his hands belonging thereto on the fifteenth day of December and June, annually, and will be entitled to receive twenty-five cents per mile, each way, by the nearest route, in making his return, which he may receive either by a credit on his account or by separate allowance by the auditor.

SEC. 57. For the purpose of enabling such assessor or his deputy to make such assessment, he shall demand the necessary statement, under oath or affirmation, from such person, and from the president, cashier, treasurer, or managing agent of each corporation, association, company, or firm, of the total amount received or produced from his or their mine or mines, interest, share, or stock in such mine or mines by the reduction of ores, sale of rock or quartz, or any material of value whatever, or from all other sources of every kind or character, together with the amount necessarily expended in producing the same during the year next preceding the time of making such statement to the assessor or his deputy; such assessor or his deputy shall then enter the total amount specified in such statement opposite the name of such person or persons, firm, corporation, association, or company assessed.

SEC. 58. If any person, officer, or agent shall neglect or refuse, on request of such assessor or his deputy, to make such statement under oath or affirmation, such assessor or his deputy shall make an estimate of the probable gross proceeds of such mine or mines, or such interest, stock, or share therein, together with the amount necessarily expended in producing the same, for the year next preceding such refusal or neglect, and the value so affixed by such assessor shall not be reduced by the board of equalization. *Provided*, That the assessment authorized to be made by the provisions of the next preceding section of this act shall be equalized, duplicated, and collected in the same manner and time as other taxes are under the provisions of this act.

SEC. 59. The net proceeds from all mines or mining claims, or from all stock, shares, or interest therein, of every person, corporation, association, firm, or company, shall be assessed and taxed in the county wherein the mine or mining claim is located.

SEC. 60. That for the purpose of collecting the revenue of the Territory, and preventing the evasion of the license laws now in force upon the general statutes of this Territory, all billiard tables, bar fixtures, and furniture belonging to, or in use for carrying on

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the business of any billiard hall, drinking saloon, restaurant or eating house, are held liable for the amount due for the license tax assessed on the same; and it is hereby expressly provided that upon the failure of the parties keeping any such establishment, or exercising ownership thereon, to pay the license of the same in manner and form provided by law, the tax collector of the county, town, or district where such establishment may be located, or properly authorized officers whose duty it shall be to enforce the collection of any such license, may seize any such table, bar fixtures, saloon fixtures, and such appurtenances, and shall proceed to sell, as upon execution at law, any such articles, or so much thereof as may be required for the payment of such tax or license as may be due and owing on account of the same.

POLL TAX.

SEC. 61. Each white male inhabitant of this Territory over twenty-one and under fifty years of age, and not by law exempt, shall pay a poll tax, for the use of the Territory and county, of three dollars. The same shall be collected at the time that other taxes herein specified are collected, and to enforce the collection of the same, the treasurer is hereby authorized to seize so much of any and every species of personal property whatever, claimed by any person liable to, and refusing or neglecting to pay his poll tax, and proceed in the same manner as against other delinquents, as provided in this act.

SEC. 62. All money collected as poll tax under the provisions of this act, after the expenses of collecting are paid, shall be paid into the county treasury, one-third thereof to be appropriated to Territorial purposes, and the remaining two-thirds to county purposes.

SEC. 63. The collectors shall be authorized to receive gold dust at the current rates for any tax that may be levied by reason of any provisions of this act.

SEC. 64. This act shall take effect and be in force from and after its passage.

[Approved February 6, 1865.]

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AN ACT concerning Divorce and Alimony.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. In any case in which a marriage has been or may hereafter be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided that either party at the time of their marriage was and continued to be impotent naturally, or that he or she had a wife or husband living at the time of such marriage, or that either party has committed adultery subsequent to such marriage, and that such husband and wife have not lived and cohabited together after having a knowledge of such adultery, or that such husband or wife has wilfully absented himself or herself from such husband or wife without any reasonable cause for the space of one year, or that a husband has wilfully deserted and absented himself from his wife, and departed from this Territory without intention of returning, or that either party have been guilty of habitual drunkenness for the space of one year, or been guilty of extreme cruelty, or been convicted of felony or other infamous crime, and such parties have not lived and cohabited together as husband and wife after such conviction, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract; but no such divorce shall in anywise affect the legitimacy of the children of such marriage.

SEC. 2. The district court sitting as a court of chancery shall have jurisdiction in all cases of divorce and alimony by this act allowed, and the like process, practice, and proceedings shall be had as they are usually had in other cases in chancery, except as hereinafter provided.

SEC. 3. No person shall be entitled to a divorce in pursuance of the provisions of this act who has not resided in this Territory one whole year previous to filing his or her bill, unless the offence or injury complained of was committed within this Territory, or whilst one or both of such parties reside in this Territory.

SEC. 4. If it shall appear that the injury or offence complained of was by collusion of the parties for the purpose of obtaining a

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divorce, or that both parties had been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

SEC. 5. In all cases of divorce, where the defendant shall appear and deny the charges alleged in the complainant's bill, the same shall be tried by a jury; but if the bill is taken as confessed, the court may proceed to a hearing of the cause by the examination of witnesses in open court, or may refer the matter to the master in chancery to take proofs; but any marriage which may have been celebrated in any other State or Territory may be sufficiently proved by the acknowledgments of the parties, their cohabitation as husband and wife, or other circumstantial evidence.

SEC. 6. When a divorce shall be decreed, it shall and may be lawful for the court to make such order touching the alimony and maintenance of the wife, the care and custody of the children, or any of them, as from the circumstances of the parties and nature of the case shall be fit, reasonable and just; and in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may refuse the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court, and may also grant alimony "a pendente lite," and the court may on application, from time to time make such alterations in the allowances of alimony and maintenance as shall appear reasonable and just.

SEC. 7. Any woman suing for a divorce who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs, and in such cases the fees shall be charged to the county in which such applicant resides.

SEC. 8. The same rule of proceeding shall be had as in other cases in chancery, and upon the hearing the court shall have the power to decree a dissolution of the bonds of matrimony if the causes mentioned in this act are proven to exist.

SEC. 9. This act shall take effect, and be in force, from and after its passage.

[Approved February 7, 1865.]

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AN ACT to locate the seat of Government of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The seat of government of the Territory of Montana be and the same in hereby located at the city of Virginia, in the county of Madison.

SEC. 2. The actual site of said capitol buildings shall be within the corporate limits of the city of Virginia, and the ground for the same shall be selected by three commissioners, to wit: George Christman of Bannack City, R. B. Parrott of Virginia City, and W. F. Sanders of Virginia City, who shall have power to perfect a title for the same at a cost of not more than two hundred dollars; and the grounds so selected by a majority of said commissioners shall be the site of the seat of government for this Territory.

SEC. 3. The commissioners shall within ninety days after the adjournment of the present legislature meet at the city of Virginia and proceed to select the ground, as prescribed in the previous section, and shall make a statement of the same, under oath, which with other papers relating thereto shall be placed on file in the office of the secretary of the Territory.

SEC. 4. The commissioners shall be allowed the sum of ten dollars each per day while engaged in locating said capitol grounds, and thirty cents per mile in travelling to and from the city of Virginia on said business, and that one week be allowed for said purpose, which said money shall be paid out of the treasury of the Territory from moneys not otherwise appropriated.

SEC. 5. All the civil officers of this Territory whose residences are required by law to be at the seat of government hereby established, and all of the officers of this Territory who are required by law to keep their offices at the seat of government, are required to move their offices to the said seat of government at the earliest practicable time.

SEC. 6. This act to take effect and be in force from and after the adjournment of the present legislative assembly.

[Approved February 7, 1865.]

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AN ACT establishing a Common School system for the Territory of Montana.

CHAPTER I.

School Fund.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Sec. 1. That the principal of all moneys accruing to this Territory from the sale of any land heretofore given, or which may hereafter be given, by the Congress of the United States for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the Territory proportionally to the number of youth or children in each between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

Sec. 2. For th purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to lay an annual tax of one mill on the dollar on all taxable property of the county as shown by the assessment rolls made by the county assessors for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected, and the said money so collected shall be paid over to the county treasurer to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed; neither shall it be lawful for any county treasurer to receive county orders in payment of county school tax, nor to pay out any school money on county orders.

Sec. 3. For the further support of common schools there shall be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for a breach of any law regulating license for the sale of intoxicating liquors, or for the keeping of bowling alleys or billiard saloons, or of any penal laws of this Territory. Such moneys shall be paid into the county treasury,

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and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

SEC. 4. That it shall be the duty of the county auditor of each county to report to the county superintendent of common schools at least twenty days before the first Friday of November of each year the amount of school tax levied in their respective counties for that year, and that it be the duty of the clerk of the district court, at the close of every term thereof, to report to the superintendent the amount of fines imposed during said term of court, and that it be the duty of all justices of the peace to report to the superintendant at least twenty days before the first Friday in November in each year the amount of fines imposed and collected by them for the past year.

CHAPTER II.

COUNTY SUPERINTENDENTS.

SEC. 1. There shall be elected by the legal voters of the respective counties, at the annual election, a county superintendent of common schools for each county, who shall hold his office for the term of three years, and until his successor is duly qualified.

SEC. 2. The superintendent shall qualify, within ten days after notice of his election, by taking an oath to faithfully discharge the duties of his office and to the best of his ability promote the interest of education within his county, which said oath shall be in writing, and placed on file in the county clerk's office.

SEC. 3. It shall be the duty of the superintendent to district the whole county, so that every resident of the county shall be in some district, and to divide such portions of the county as shall be inhabited into convenient districts, to define the boundaries and numbers, and to prepare and keep in his office a map of the districts of the county, upon which the lines and boundaries of each district shall be clearly defined; he shall lay off new districts or divide old ones when the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district who

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shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in such district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend in sufficient numbers to do business as hereafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the county superintendent to be at the county seat on the third Friday and Saturday of May and November of each year, for the purpose of making any alterations desired in districts, and for the purpose of examining teachers, and said superintendent shall give ten days public notice of the same by posting up handbills or otherwise, and any district applying on different days for the transaction of such business shall pay the superintendent a reasonable compensation for his trouble, not exceeding the sum of twelve dollars per day, and all teachers examined on different days shall pay to the superintendent the sum of six dollars.

SEC. 6. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county: he shall examine them in orthography, reading, writing, arithmetic, English grammar, and geography; and if he be of the opinion that the person examined is competent to teach such branches, and that he or she is of good character, he shall give such person a certificate, certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only, and may be revoked sooner by the superintendent for good cause.

SEC. 7. The superintendent shall visit all the schools taught in his county by a qualified teacher, at least once a year; he shall give information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county.

SEC. 8. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office, and he shall on or before the first day of December of each year, make out from the district reports a statement of the number of scholars in the county, the number of school-houses, the

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number of districts, in how many districts a school has been kept the past year, what school-books are principally used, what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may if convenient publish it in some newspaper in this Territory.

SEC. 9. It shall be the duty of the superintendent at the same time to make an apportionment of the school fund in the county treasury, among the several school districts in their several counties, in proportion to the number of persons in the district over the age of four and under twenty-one years; and certify the amount due to each district, which shall be drawn as hereafter directed; and shall forthwith notify the clerks of the school districts of the amount due their respective districts.

SEC. 10. When the districts shall have complied with the law as hereafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts for the amount of the school funds appropriated to each on the presentation of which order the treasurer of the county shall pay over to the clerks of the districts all moneys due the respective districts, and the clerks shall endorse on said order a receipt of so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith and charge the same to the proper district.

SEC. 11. The superintendent shall, in the name of the county, collect or cause to be collected all moneys due the school fund from fines or from any other source in his county; and until the legislature shall make some provision for the disposal of the school lands given by Congress to the Territory for school purposes, it shall be the duty of the superintendent to preserve said lands from injury and trespass; and when it shall come to his knowledge that any trespass has been committed on such lands, he shall make complaint of the same before the grand jury of the proper county at the first regular term of court after he has obtained a knowledge of such trespass; and all fines and other moneys thus collected shall be paid over to the treasurer of the county, for the use of common

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schools, and divided in said county in the same manner as other school funds.

SEC. 12. Any person trespassing upon or injuring the school lands, after the same are surveyed, as mentioned in the preceding section, shall be liable to be indicted for the same, and upon conviction shall be punished by imprisonment in the county jail, not exceeding six months, or by fine not exceeding five hundred dollars.

SEC. 13. The said superintendent shall be allowed out of the county treasury as compensation for his services, the sum of one hundred dollars a year. The county commissioners may in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding three hundred dollars per year, but in all cases where the salary exceeds the sum of two hundred dollars, one-half of the excess shall be paid out of the school fund: *Provided*, also, that a proper allowance shall be made in addition thereto for necessary books and stationery, and for the preparing of the map required in section three; and in each county where there are not less than ten organized districts capable of supporting a school as required by law, a reasonable allowance shall be made out of the county treasury for office rent; but no rent shall be allowed in any case until the map required by section three shall be placed in said office.

CHAPTER III.

SEC. 1. A school meeting may be called at any time for the purpose of organizing a new district as provided in section four under the title of county superintendent. No less than five legal voters shall constitute a quorum to do business in any district meeting.

SEC. 2. Such school meeting shall have power to do all necessary business, the same as the regular annual school meeting would have.

SEC. 3. Such meeting when assembled shall organize by the appointment of a chairman and secretary. It shall then proceed to elect by ballot three directors; of those so elected, the person having the highest number of votes shall hold his office for the term of three years, and the person having the next highest number shall

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his office for two years, and the person having the next highest number of votes shall hold his office one year, and each shall continue in office until his successor is elected and qualified. In case two or more persons of those elected shall receive an equal number of votes, the duration of their term of office shall be determined by lot in presence of the chairman and secretary.

SEC. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two, or three years, as he may have been elected, from the next annual school meeting, unless such director shall be elected to fill a vacancy, in which case he shall continue in office for the unexpired term, so that at every annual school meeting except the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within ten days after their election, by taking oath or affirmation before the district clerk to discharge the duties of the office to the best of their abilities, and to promote the interests of education within their districts. This oath shall be in writing, and filed with the clerk of the district.

SEC. 6. It shall be the duty of the school directors of every district, First, To call special meetings of the districts whenever they shall deem it necessary. Second, To make out a tax list of every distinct tax, containing the names of the taxable inhabitants in the district, and the amount of tax payable by each such inhabitant set opposite his name. Third, To annex to such tax list a warrant, directed to the clerk of the district, for the collection of the sums in such list mentioned, including such per centage under five per cent., for fees of the clerk, as they may deem just. Fourth, To purchase or lease a site for the district school-house, as designated by the meeting of the district, and to build, hire, or purchase, keep in repair, and furnish such school-house with the necessary fuel and appendages, out of the funds collected and paid to the clerk for such purpose, and to have the custody and safe keeping of said school-house. Fifth, To contract with and employ teachers; *Provided*, That no teachers shall be employed who shall not first have obtained a certificate of examination from the county superintendent in the branches of instruction to be taught in their respective districts. Sixth, To give orders on the district clerk for their wages. Seventh, To discharge any school teacher for any neglect of duty, or for any cause that in their opinion renders the

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services of such teacher unprofitable as a teacher, by first paying him or her for services rendered.

SEC. 7. Any two of the directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the schools of their respective districts at least once in each term. They shall endeavor, in connection with the county superintendent, to procure the introduction of a good and uniform system of school books in their district; and when the teacher experiences difficulty in the government of the school, it shall be the teacher's duty to refer the cases of disorderly scholars to the directors, who shall decide how such scholars shall be punished, or whether they shall be dismissed from school.

CLERKS.

SEC. 9. The first annual school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall qualify within ten days after his election before one of the directors, after the same manner as the directors, and give bond to the district directors in such sum as they may require, that he shall well and truly perform the duties of his office as by law directed. If a clerk be elected to fill a vacancy, he shall continue in office for the unexpired term, and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

SEC. 10. It shall be the duty of each district clerk, First, To record the proceedings of his district in a book to be provided for that purpose by the district. Second, To give notice of annual or special meetings. Third, To procure a list of all persons in the district between the ages of four and twenty-one years. Fourth, To give due notice at least ten days before any tax that may be assessed shall be collected, by written or printed notices in three of the most public places in the district. Fifth, To collect all district taxes which he shall be required by the warrant from the directors to collect within the time limited in each warrant for its return; and he shall have the same authority to enforce the collection of such tax; and he shall be allowed for collecting such percentage as the directors may deem proper within the limit of this law. Sixth,

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To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

SEC. 11. It shall be the duty of the clerk to furnish the county superintendent, within ten days after the first Friday in November in each year, a report containing the number and names of scholars in his district over four and under twenty-one years of age, how long a school has been kept in his district the past year, what school-books are principally used, what proportion of scholars in the district have attended school, and the amount of money paid to teachers, or otherwise expended.

SEC. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just, true and accurate account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual school district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district, to his successor when his successor has been legally qualified, and upon a refusal or neglect to do so, the directors shall forthwith bring suit on his bond.

SEC 13. That whenever the interests of the district require it, the directors may establish a union school, employ a principal teacher and subordinate teachers, and grade the school into departments and classes.

SEC. 14. District clerks shall be treasurers of their respective districts.

SEC. 15. All money coming into the hands of the district clerks shall remain in the hands of such clerk or clerks, subject to the order of the directors, and shall not be paid out in any other way.

CHAPTER IV.

TEACHERS.

SEC. 1. It shall be the duty of every teacher of a common school, to procure a certificate of qualification, and good moral character, before entering upon the duties of a teacher. It shall be the duty of a teacher to keep a register of the names of the children attending school, their age, the time when they begin, the time they continue, and of their daily attendance, which register

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shall be filed with the clerk of the district at the close of each term.

CHAPTER V.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings the director whose term of office shall first expire shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have power to repeal, alter or modify their proceedings from time to time as occasion may require.

SEC. 4. District meetings legally called shall have power to levy a tax upon the property of the district, for any purpose whatever connected with and for the benefit of schools, and the promotion of education, in the district, subject to the restrictions hereinafter provided.

SEC 5. Any new district failing to organize and report to the county superintendent the number of children over four and under twenty-one years of age in said district, before the first Friday in November, or any district having been organized for the term of one year or more, failing to report to the county superintendent as required in section eleven of the chapter entitled school meetings in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of the school district shall fail to make such report, any inhabitant of such district may make such report, verified on oath before one of the directors, and the county superintendent shall receive it the same as if made by the clerk.

SEC. 6. The county superintendent shall apportion all the county fund for that year, among those districts only which have organized and reported according to law.

SEC. 7. No district shall be allowed to draw its apportioned fund from the treasury until it shall satisfy the county superintendent that a school has been kept in the district by a qualified teacher for at least three months, except as hereinafter provided.

SEC. 8. When the clerk of any school district shall satisfy the county superintendent that any amount has been raised in his dis-

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trict for the support of teachers, or building school-houses, and that a school has actually been kept by a qualified teacher, as provided for in the preceding section, the superintendent shall issue an order on the county treasurer in favor of the clerk of such district for its apportionment of county school funds in the treasury to the credit of such district.

SEC. 9. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit such apportionment, and the amount thereof shall be again added to the county school fund and divided again among all the districts.

SEC. 10. It shall be competent for the directors of any district, where it may be required, to assess upon the parent or guardians of the children attending the school, their portion of the necessary expenses of sustaining the school in the way of tuition, fuel, &c., in proportion to the number of scholars sent by each, but in all cases they shall first endeavor to raise the amount required by voluntary subscription.

SEC. 11. The tax shall be levied by any district for the hiring of a teacher, but any district may levy a tax for any of the following purposes: To purchase a suitable site for a school-house, building or repairing the same, the purchase of books for a library, maps, globes, or other apparatus, for the use of said district or school, but no district shall levy any tax for any of these purposes, until the directors or some other person shall have sought to obtain the amount required by voluntary subscriptions, and no money shall be expended by the directors or clerk for any other purpose than that for which it was raised, except when authorized by a vote of the district.

SEC. 12. In all cases when a tax is levied, it shall be stated in the notice given of the meeting, for what purpose or purposes a tax is to be levied.

SEC. 13. The directors may assess for any object named in section eleven, the property of non-residents which is embraced within the limits of their districts in any amount they may deem necessary without calling a meeting of the district for that purpose, where the inhabitants thereof raise a part of the amount required by voluntary subscriptions, said assessment not to exceed the average per centum of the subscriptions of the inhabitants of the district, but if a district

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meeting be held to levy a tax on all the taxable property in the district, the property of non-residents shall be assessed in equal proportion with the rest, and in neither case shall any tax exceed fifty cents on the hundred dollars valuation on taxable property according to the valuation made for the assessment of county taxes.

SEC. 14. The directors of any district may permit scholars living in another district to attend their school with or without charge, and persons over the age of twenty-one years at such rates of tuition per month as they may deem proper, and in all cases under this act, a month of tuition shall consist of four weeks of five days to a week.

SEC. 15. There shall be an annual school meeting held in each district upon the first Friday in November, and notice of all annual and special meetings shall be in writing, signed by the directors or clerk of the district, and shall state the object for which the meeting is called, and shall be posted in three public places in the district, at least six days previous to holding said meeting.

SEC. 16. Every white male inhabitant over the age of twenty-one years, who shall have paid or be liable to pay any district tax, shall be a legal voter at any school meeting, and no other person shall be allowed to vote.

SEC. 17. The tax-payers may, with the consent of the directors of their district, perform by labor their portion of taxation for the erection of school-houses, and shall be so returned by the clerk of said district.

SEC. 18. No person shall be disqualified to hold the office of county superintendent, district director, or clerk, on account of holding any other office within the Territory at the same time.

SEC. 19. The governor may appoint county superintendents under this act to hold their office until such time as others may be elected and qualified.

SEC. 20. This act shall be in force from and after its passage.

[Approved February 7, 1865.]

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AN ACT concerning the Foreclosure of Mortgages.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. All mortgagees of real estate, and mortgagees of personal estate, when the debt or damages secured amounts to fifty dollars or more, may file a petition in the office of the district or probate court against the mortgageor, and the actual tenants or occupants of such real estate, or persons in possession of such personal property, setting forth the substance of the mortgage deed, and praying that judgment may be rendered for the debt or damage, and that the equity of redemption may be foreclosed and the mortgaged property sold to satisfy the amount due.

SEC. 2. Deeds of trust, in the nature of mortgages, may, at the option of the *cestui que trust*, their executors, administrators, or assigns, be foreclosed by them, and the property sold in the same manner in all respects as in cases of mortgages.

SEC. 3. If any part of the property be real estate, the petition may be filed in any county where any part of the mortgaged premises is situated; if it be exclusively personal estate, it may be filed and proceeded with as in other civil actions.

SEC. 4. In case of the death of the mortgagee or his assignee, or of the mortgageor, whether before or after action is brought, the personal representative of the deceased party shall be made plaintiff or defendant as the case may require.

SEC. 5. Summons shall issue and be served and returned in like time and manner as in ordinary civil actions.

SEC. 6. Any person claiming an interest in the mortgaged property may on motion be made defendant to any such proceedings, and may answer an avoidance in bar of the deed or debt or damage, and issue shall be made and tried as in ordinary civil actions.

SEC. 7. All incumbrance or persons having an interest existing at the commencement of the suit, subsequent as well as prior in date to the plaintiff's mortgage, provided the same shall be of record in the county where the same may be situated at the com-

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mencement of the suit, shall be made parties, otherwise they shall not be bound by the judgment.

SEC. 8. If any plaintiff shall allege in his petition that the mortgageor or other defendant is not a resident of this Territory, or that his place of residence is unknown, or that he is dead, and there is no personal representive in this Territory, or that his name or place of residence is unknown, the clerk of court, being satisfied of the truth of any such facts, shall make an order of publication, which shall conform as near as may be to orders of publication in ordinary civil actions, and shall be published in like manner as said orders.

SEC. 9. Judgment by default shall be rendered against any defendant who, after being summoned or notified, shall not appear and answer at the time allowed in ordinary actions.

SEC. 10. When the mortgageor is not summoned, but notified by publication, and has not appeared, the judgment, if for the plaintiff, shall be that he recover the debt and damage or damages found to be due, and costs, to be levied on the mortgaged property, describing it as in the mortgage.

SEC. 11. When the mortgageor has been duly summoned or appears to the action, the judgment, if for the plaintiff, shall be as in the preceding section specified, with the addition that if the mortgaged property be not sufficient to satisfy said debt and damage or damages and costs, then the residue to be levied on other goods, chattels, lands, and tenements of said mortgageor.

SEC. 12. The execution to be issued should be a special *fieri facias*, directed to the sheriff, and shall be in conformity to the judgment.

SEC. 13. Such writs shall be returnable as executions, and the advertisement, sale and conveyance of real or personal estate under the same shall be made as under ordinary executions.

SEC. 14. If such mortgage be for real estate, such writ of *fieri facias* shall be directed to the sheriff of the county in which the same is situated, and if it be for personal property it may be directed to any county.

SEC. 15. A purchaser under a sale by virtue of an execution on a judgment, under this act, shall take a title as against the parties to the suit, and he shall not be permitted to set it up against the subsisting equity of these incumbrances who are not parties to

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the same, and who are required to be made parties thereto by the seventh section of this act.

SEC. 16. When the personal representative of the mortgagee has been duly summoned, or appears to the action, the judgment, if for the plaintiff, shall be as before directed; and if in such case the mortgaged property be sufficient to satisfy the debt and damage or damages and costs, the judgment as to the residue shall have the effect of a judgment against an executor or administrator as such.

SEC. 17. Mortgages of leasehold estate shall be proceeded on as in mortgages of real estate.

SEC. 18. In all suits commenced in virtue of this act the proceedings shall conform as near as may be to the proceedings in civil actions.

SEC. 19. In all mortgages in which personal estate only is conveyed, and the debt exclusive of interest secured by the same shall not exceed one hundred dollars, it shall and may be lawful for the mortgagee or his personal representative, upon default being made in the payment of the mortgaged debt by the mortgagee or his legal representative, to sell the mortgaged property, or so much thereof as will satisfy the debt, giving the mortgageor, after default shall have been made in the payment of the mortgaged debt, sixty days previous notice in writing that the mortgaged property will be sold unless the debt secured by it is paid, and the giving thirty days notice of the time and place of sale, the notice to be published in the same manner as a sheriff's notice of the sale of real estate.

SEC. 20. All mortgages of real and personal property, or both, with power of sale in the mortgagee, and all sales made by such mortgagee or his personal representative, in pursuance of the provisions of such mortgages, shall be valid and binding by the laws of this Territory upon the mortgagees and all persons claiming under them, and shall forever foreclose all right and equity of redemption of the property so sold.

SEC. 21. If any mortgagee, trustee, or *cestui que trust*, his executor, administrator, or assignee, receive full satisfaction of any mortgage or deed of trust, he shall at the request of the person making the same acknowledge satisfaction of the mortgage or deed of trust on the margin of the record thereof, or deliver to such person a sufficient deed or release to the mortgage or deed of trust.

SEC. 22. If any such person thus receiving satisfaction do not

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within thirty days after requested acknowledge satisfaction on the margin of the record, or deliver to the person making satisfaction a sufficient deed of release, he shall forfeit to the party aggrieved ten per cent. upon the amount of the mortgage or deed of trust money, absolutely, and any other damages he may be able to prove he has sustained, to be recovered in any court of competent jurisdiction.

SEC. 23. Any attorney in fact, to whom the money due on any mortgage or deed of trust is paid, shall have power to execute said release, as specified in section twenty-one of this act. Such acknowledgment of satisfaction thus made, or such deed of release duly acknowledged and recorded, shall have the effect to release the mortgage or deed of trust, and bar all actions brought thereon, and revest in the mortgagee or person who executed the deed of trust, or his legal representative, all title to the property contained in such mortgage or deed of trust.

SEC. 24. If such property be redeemed by payment to the officer before the sale, such officer shall make a certificate thereof, and acknowledge the same before some officer authorized to take acknowledgments of deeds, and such certificate shall be recorded in the office in which the mortgage or deed of trust is recorded, and shall have the same effect as satisfaction entered on the margin of the record.

SEC. 25. This act to take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT authorizing County Commissioners to Pay Interest on County Warrants.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That all county warrants heretofore drawn, or that may hereafter be drawn, by the proper authorities of any county, shall, after having been presented to the county treasurers of the respective counties of this Territory, and by them endorsed not paid for want of funds in the treasury, from and after said date of

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presentation and endorsement, shall draw interest at the rate of ten per cent. per annum.

SEC. 2. This act shall take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT to provide for Vacancies in the Legislature.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. If any member elected to either house of the legislative assembly shall resign during the recess thereof, he shall address and transmit his resignation in writing to the governor; and when any such member shall resign during the session, he shall address his resignation, in writing to the presiding officer of the house of which he is a member; which shall be entered on the journal; in which case, and in all cases of vacancies, happening or being declared during any session of the general assembly, by death, expulsion, or otherwise, the presiding officer of the house in which such vacancy shall happen, shall immediately notify the governor thereof.

SEC. 2. Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house during the recess, he shall without delay issue a writ of election to supply such vacancy.

SEC. 3. When any vacancy shall happen in the council, for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when the vacancy shall happen in a district which shall have been divided or altered, after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house for any county which shall have been districted after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

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SEC. 4. The sheriff to whom any writ of election shall be delivered, shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election, accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie; who shall cause copies of such notice to be set up, and the election to be held accordingly, in such part of their respective counties as composed part of the old county or district, for which the election is to be held, at the last preceding general election; and returns shall be made, and the certificate of election granted, in all things as if no division had taken place.

SEC. 5. When any district or county shall be so altered or divided during the term for which a member shall be elected, and the new district or county shall be authorized to elect their member before the expiration of the term of the former member, in that case, the election to fill the vacancy shall be held for the district or county as it shall remain after such alteration or division, and not as it was at the last preceding general election.

SEC. 6. This act to take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT concerning Fugitives from Justice.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Whenever the executive of any State, or of any Territory of the United States, shall demand of the executive of this Territory any person who is a fugitive from justice, and shall have complied with the requisitions of the act of Congress in that case made and provided, it shall be the duty of the executive of this Territory to issue his warrant, under the seal of the Territory, to apprehend the said fugitive, directed to any sheriff, coroner, or constable of any county of this Territory, or other person whom the

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executive may think fit to entrust with the execution of said process; any of the said persons may execute such warrants anywhere within the limits of this Territory, and convey such fugitive to any place within this Territory which the executive in his warrant shall direct.

SEC. 2. Whenever the executive of this Territory shall demand a fugitive from justice from the executive of any other State or Territory, he shall issue his warrant, under the seal of the Territory, to some messenger, commanding him to receive the said fugitive and convey him to the sheriff of the proper county where the offence was committed

SEC. 3. The expenses which may accrue under the last preceding section, being first ascertained to the satisfaction of the executive, shall, on his certificate, be allowed and paid out of the Territorial treasury on the warrants of the auditor.

SEC. 4. Whenever any person within this Territory shall be charged, upon the oath or affirmation of any credible witness before any judge or justice of the peace, with the commission of any treason, murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting, in any other State or Territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice of the peace to issue his warrant for the apprehension of said person. If upon examination it shall appear to the satisfaction of such judge or justice that the said person is guilty of the offence alleged against him, it shall be the duty of the judge or justice to commit him to the jail of said county, or if the offence be bailable according to the laws of this Territory, to take bail for his appearance at the next district court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner and those who bring him to writing, and to return the same to the next district court of the county where such examination is had as in other cases, and shall also send a copy of the examination and proceedings to the executive of this Territory as soon thereafter as may be. If in the opinion of the executive of this Territory the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the State or Territory wherein the crime is alleged to have been committed of the proceedings which have been had

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against such person, and that he will deliver such person on demand. When such demand shall have been made, the executive of this Territory shall forthwith issue his warrant, under the seal of the Territory, to the sheriff of the county in which the said person is committed or bailed, commanding to surrender him to such messenger as shall be therein named, to be conveyed out of this Territory. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith anywhere within the Territory, and to surrender him agreeably to said warrant.

SEC. 5. In case where a party has been admitted to bail, and shall appear at the district court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of said court to discharge the said recognizance or continue it according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time that hath intervened since the arrest of the party, and the strength of the evidence against him. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison, or exonerated from his recognizance, as the case may be.

SEC. 6. If the recognizance shall be forfeited it shall enure to the benefit of the Territory.

SEC. 7. In all cases where complaint shall be made as aforesaid against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from other cases for the like services. Nothing herein contained shall prevent the clerk from instituting suit on said bonds in the ordinary mode of judicial proceedings if he shall deem it proper.

SEC. 8. If any person charged with or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting, shall break prison, escape, or flee from justice, or abscond, or secrete himself, in such cases it shall be lawful for the governor, if he judge it necessary, to offer any reward not exceeding five hundred dollars for apprehending and delivering such person into custody of its sheriff or other officers as he may direct. The person or persons so apprehending and delivering any such person as aforesaid, and producing to the governor, the sheriff, or justice receipt for the body, it shall be lawful for the governor to

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certify the amount of said claim to the auditor, who shall issue his warrant on the treasury for the same.

SEC. 9. This act to take effect from and after its passage and approval by the governor.

[Approved February 8, 1865.]

AN ACT defining the duties of Territorial Auditor and Treasurer of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the auditor of the Territory shall issue warrants drawn upon the Territorial treasury in favor of all persons to whom the legislative assembly may direct in such fractional parts of the amount as said persons may demand; *Provided*, It shall not be in a less sum than five dollars, unless the amount due be less than five dollars.

SEC. 2. That the auditor shall keep a record of all accounts presented to him, and for which warrants shall have been issued.

SEC. 3. That he shall furnish the collectors of each county or district with blank licenses and receipts of money collected or to be collected, subscribed by himself, taking said collectors receipt for the same.

SEC. 4. He shall prepare and report to the legislative assembly at the commencement of each regular session a full and detailed account of the condition of the revenue, and expenditures of the preceding year, with estimates for the amount of revenue and expenditures for the succeeding year, together with such plans as a careful examination may suggest for the support of the public credit, for promoting frugality and economy in the expenditures, and generally for the more perfect understanding of the fiscal affairs of the Territory; show the amount of the appropriations made by law, and the amount paid under the same; show the amount of revenue chargable to each county, and the aggregate of each object of taxation.

SEC. 5. He shall direct prosecution in the name of the Terri-

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tory for all delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who become possessed of public money or property and fail to pay over the same, and against all debtors of the Territory.

SEC. 6. He shall keep his office at the seat of government, in connection with the library of the Territory, which office shall be furnished, at the expense of the Territory, with all needful maps, books, blanks, stationery, cases for books, fuel, &c.

DUTIES OF TREASURER.

SEC. 7. The treasurer shall receive from the collector all money belonging to the Territory, and disburse the same upon the auditor's warrant as provided by law, and not otherwise; keep a just and true account of all money received, and the disbursement thereof; he shall render his account to the auditor for settlement quarterly, or oftener if required; he shall report to the legislative assembly at the commencement of each regular session, the condition of the treasury, and its operations for the preceding year.

MISCELLANEOUS PROVISIONS.

SEC. 8. The auditor and treasurer shall have free access to each other's offices for the inspection of all books, papers and accounts thereof; and to all other offices of the Territory for the inspection of all such books and records as concern any of their duties.

SEC. 9. They shall be authorized to administer oaths or affirmations, and compel the attendance of witnesses as in courts of record, in all matters touching the duties of their offices.

SEC. 10. The auditor and treasurer shall receive a salary of seven hundred dollars each, which shall be paid quarterly out of the Territorial treasury.

SEC. 11. The auditor shall receive, in addition to his salary, five per cent. on all the warrants issued by him.

SEC. 12. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 8, 1865.]

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AN ACT concerning Joint Rights and Obligations.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. If any partition be not made between joint tenants, the property of those who die first shall not accrue to the survivor or survivors, but descend or pass by devise, and shall be subject to debts, dower, charges, &c., or transmissible to execution or administration, and be considered to every intent and purpose in the same view as if such deceased joint tenants had been tenants in common.

SEC. 2. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy, tenancy in common, or copartenary, the party aggrieved shall have his action of trespass or trover for the injury in the same manner as he would have if such joint tenancy, tenancy in common, or copartenary did not exist.

SEC. 3. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

SEC. 4. This act to take effect, and be in force, from and after its passage.

[Approved February 8, 1865.]

AN ACT to provide increased compensation to officers in this Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the said compensation law shall be so construed as to pay the officers now in the Territory from the date of their appointment.

[Approved February 8, 1865.]

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AN ACT to provide for the Formation of Partnership.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Limited partnership for the transaction of mercantile, mechanical, mining or manufacturing business, within this Territory, may be formed by two or more persons, upon the terms, and subject to the conditions and liabilities prescribed in this act, but nothing contained in this act shall authorize such partnership for the purpose of banking or insurance.

SEC. 2. The said partnership may consist of two or more persons, who shall be called general partners, who shall jointly and severally be responsible as general partners are by law, and two or more persons who shall contribute to the common stock a specific sum in actual cash payment as capital, who shall be called special partners, and who shall not personally be liable for any debt of the partnership, except in the cases hereinafter mentioned.

SEC. 3. The persons forming such partnership shall make and severally sign a certificate which shall contain the name of the firm under which such partnership is to be conducted, the name and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted and the time when the partnership is to commence, and when it is to terminate.

SEC. 4. No such partnership shall be deemed to have been formed until a certificate made as aforesaid shall be acknowledged by all the parties, before some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the principal place of business of the partnership is located, in a book to be kept for that purpose, open to public inspection. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners for all the engagements thereof.

SEC. 5. Upon every renewal of a limited partnership beyond the time originally agreed upon for its duration, a certificate shall

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be made as provided for in the original formation of partnership; it not renewed, it shall be deemed a general partnership.

SEC. 6. The business of the partnership shall be conducted under a firm, in which names of the general partners only shall be inserted. The name of any special partner shall be used in said firm with his consent, or if he shall personally make any contract respecting or concerning the partnership with any person except the general partner.

SEC. 7. During the continuance of any partnership under the provisions of this act, no part of the capital stock thereof shall be withdrawn, nor any division of interests be made, so as to reduce such capital stock below the sum stated in the certificate before mentioned. If at any time during the continuation or at the termination of the partnership the property assets shall not be sufficient to pay the partnership debts, the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn respectively.

SEC. 8. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid, unless it provide for a distribution of the partnership property among all the creditors in proportion to the amount of their several claims.

SEC. 9. In all cases of such assignment, as provided in the preceding section, the assent of the creditors shall be presented, unless within sixty days after notice thereof any shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper printed in the county where the place of business of the party making it is situated, or if no newspaper be printed in such county, then in some newspaper in the Territory nearest thereto, within twenty days after making such assignment.

SEC. 10. All suits respecting the business of such partnership shall be prosecuted by and against the general partnership except in those cases in which provisions are made in this act that the special partners shall be deemed general partners, and that special partnership shall be deemed general partnership, in which cases all the partners deemed general partners may join or be joined in such suit, and excepting also those cases where special partners shall be

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held severally responsible on account of any sum by them received or withdrawn from the common stock, as before provided.

SEC. 11. No dissolution of a limited partnership shall take place except by operation of law before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the recorder's office in which the original certificate of renewal of the partnership was recorded, and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificate of the foundation of such partnership was published according to the provisions of this act, and if no newspaper shall at the time of such dissolution be printed in the county, then the notice of such dissolution shall be published in some newspaper in the Territory nearest thereto.

SEC. 12. In all cases not otherwise provided for in this act, the members of limited partnership shall be subject to all the rights of general partners.

SEC. 13. This act to take effect and be in force from and after its passage.

[Approved February 9, 1865.]

AN ACT relating to the Support of the Poor.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the board of county commissioners of the several counties of this Territory are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

SEC. 2. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters, of such poor person, if they or either of them be of sufficient ability, and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister or brother, when directed by the board of county commissioners of the county,

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when such poor person shall be found within such relation, reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support, except parent or child.

SEC. 3. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of such poor person shall be next called on, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on, and if there be no brothers and sisters, the grandchildren of such poor person shall be called on, and then the grandparents; but married females, while their husbands live, shall not be liable to a suit.

SEC. 4. When any poor persons shall not have relations in any county in this Territory, as are named in the preceding sections, or such relations shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require out of the county treasury; and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

SEC. 5. When any minor or other person shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents or other relations as aforesaid are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the act concerning apprentices.

SEC. 6. When any non-resident or any other person not coming within the definition of a pauper, shall fall sick in any county in this Territory, not having money or property to pay his board, nursing, or medical attendance, it shall be the duty of the commissioners of the proper county, on complaint being made, to give or order to be given, such assistance to such person as they may deem

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just and necessary; and if such sick person shall die, then the said commissioners shall order to be given to such person decent burial; and the said commissioners shall make such allowance for board, nursing and medical attendance, or burial expenses, as they may deem just and equitable, and order the same to be paid out of the county treasury.

SEC. 7. When the application is made by any pauper, to the board of county commissioners of any county in this Territory, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of the county for two months immediately preceding the day upon which such application is made.

SEC. 8. When application is made by any pauper to the board of county commissioners as aforesaid, it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county for two months, he shall be entitled to all the relief provided by this act; but if on examination it shall appear that said pauper is a resident of some other county of this Territory, the commissioners shall, at the expense of the county, cause said pauper to be removed to the county of which he is a resident, or may, if they think best, issue a notice directed to some constable of the county, which said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county, and after so serving said notice by reading the same to said pauper, said constable shall within five days thereafter return the same to the clerk of the board of county commissioners issuing the same, noting the time and manner of service.

SEC. 9. After service of such notice aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners deem it absolutely necessary.

SEC. 10. The board of county commissioners of any county in this Territory may, if they think proper, cause to be built or provided in their respective counties, workhouses for the accommodation and employment of such paupers as may from time to time become a county charge; and such workhouses and paupers shall be under such rules and regulations as the county commissioners may deem just and proper.

SEC. 11. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 9, 1865.]

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AN ACT relating to Forms.

Be it enacted by the Legislative Assembly of the Territory of Montana:

That the following forms may be substantially followed, varying the forms to suit the case:

FORM OF INFORMATION.

TERRITORY OF MONTANA, } ss.
County of ———. }

The complaint and information of H. B., of said county, made before C. D., a justice of the peace in and for said county, on the —— day of ———, 18——, who being duly sworn, on his own oath, says that the crime of ——— has been committed in the county of ———, and that one E. F. committed the same, or say that he has just and reasonable grounds to suspect that one E. F. hath committed the same.

Subscribed and sworn to before me,

C. D., a Justice of the Peace.

FORM OF A WARRANT.

TERRITORY OF MONTANA, } ss.
County of ———. }

In the name and by the authority of the Territory of Montana: It appearing that E. F. has committed the crime of ———, in the county of ———, you are therefore commanded forthwith to arrest E. F. and bring him before me, or some other magistrate of said county, to be dealt with according to law.

A. B., Justice of the Peace.

FORM OF AN ORDER THEREON WHEN SUCH WARRANT IS TO BE EXECUTED BY A PERSON THEREIN NAMED.

It is ordered that —— ———, named in the within warrant, be hereby authorized to execute the same.

A. B., Justice of the Peace.

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FORM OF COMMITMENT FOR FURTHER EXAMINATION.

TERRITORY OF MONTANA, County of ———. } ss.

In the name and by the authority of the Territory of Montana: To the keeper of the common jail of said county: Receive to your custody and safely keep for further examination E. F., who is charged before me with having committed the offence of ———.

Given under my hand this —— day of ———, 18——.

A. B., Justice of the Peace.

FORM OF AN ORDER TO BRING UP A PRISONER FOR EXAMINATION.

TERRITORY OF MONTANA, County of ———. } ss.

In the name and by the authority of the Territory of Montana: To the keeper of the common jail of said county: You are hereby commanded to bring E. F., a prisoner in your custody, to my office in ———–, in said county, for further examination.

Given under my hand this —— day of ———, 18——.

A. B., a Justice of the Peace.

FORM OF SUBPŒNA FOR WITNESSES TO ATTEND AN EXAMINATION COURT.

TERRITORY OF MONTANA, County of ———. } ss.

In the name and by the authority of the Territory of Montana: To any sheriff or constable of said county: You are hereby commanded to summon —— ———, to be and appear before me at my office in said county forthwith (or on the —— day of ———, inst., at —— o'clock) to testify the truth in behalf of the plaintiff (or defendent) on the examination of the charge against E. F. of having committed the offence of ———.

Given under my hand this —— day of ———, 18——.

A. B., Justice of the Peace.

FORM OF AN OATH OF WITNESSES ON THE EXAMINATION.

You do solemnly swear that the evidence you shall give between the Territory of Montana and E. F., touching the charge exhibited against him now in hearing, shall be the truth, the whole truth, as you shall answer to God.

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FORM OF AFFIRMATION.

You do solemnly, sincerely, and truly declare and affirm that the evidence you shall give between the Territory of Montana and E. F., touching the charge exhibited against him now on trial, shall be the truth, and nothing but the truth, and this you do under the pains and penalties that may ensue thereon.

FORM OF RECOGNIZANCE OF BAIL.

The Territory of Montana } For offence of ————————.
vs.
E. F. }

Be it remembered that on the —— day of ————, 18——, H. K. and J. S., of ———— county, Territory of Montana, appeared personally before me, A. B., a justice of the peace of ———— county, and severally acknowledged themselves jointly indebted to the Territory of Montana in the sum of ———— dollars, to be made and levied of their respective goods, chattels, lands, and tenements, to be void, however, if the said E. F. shall personally appear at the next term of the district court of ———— county, on the first day thereof (if the recognizance be taken in term time, then it must require the party to appear on some day of the term, to be herein designated) to answer to an indictment preferred against him for the offence of ————, and to do and receive what shall be by said court then and there enjoined upon him, and shall not depart from the said court without leave.

Witness our signatures this —— day of ————, 18——.

H. K.
J. S.

Taken, subscribed, and acknowledged before me the day and the year first above written.

A. B., Justice of the peace.

RECOGNIZANCE OF A WITNESS.

Territory of Montana }
vs.
E. F. }

Be it remembered that on the —— day of ————, that G. H., of the county aforesaid, appeared before me, a justice of the peace of said county, and acknowledged himself indebted to the Territory

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of Montana in the sum of ———— dollars, to be levied on his goods, chattels, lands and tenements; to be void, however, upon his appearing in the district court of the said county of ————, on the first day of its next term, (or if the recognizance is taken in term time, then it must require on some day of the term to be herein designated,) to testify on behalf of the plaintiff (or defendant) in the abovenamed prosecution, and not to depart without leave of said court.

Taken, subscribed and acknowledged the day and year first above written.

G. H.

A. B., Justice of the Peace.

FORM OF MITTIMUS IN CASES NOT BAILABLE.

TERRITORY OF MONTANA, } ss.
County of ————, }

In the name and by the authority of the Territory of Montana: To the keeper of the common jail of said county: You are commanded to receive into the common jail of ———— county, E. F., and him safely keep, until discharged by due course of law, he having been held by me, as an examining court, for trial in the district court of ———— county, on the charge of ————, after first having inquired into the truth and probability of said charge exhibited against him, by the oaths of all the witnesses attending such examination.

Given under my hand as justice of the peace of ———— county, this —— day of ————, 18——.

A. B., Justice of the Peace.

FORM OF MITTIMUS IN BAILABLE CASES.

TERRITORY OF MONTANA, } ss.
County of ————, }

In the name and by the authority of the Territory of Montana: To the keeper of the common jail of said county: You are hereby commanded to receive into the jail of said county, E. F., and him safely keep until discharged by due course of law, he having been held, by me as an examining court, for trial in the district court of ———— county, on the charge of ————, after first having enquired into the truth and probability of said charge exhib-

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ited against him, by the oaths of all the witnesses in attendance on such examination, and allowed in the sum of ———— dollars, for default of which he is committed to jail.

Given under my hand as justice of the peace of ———— county, this —— day of ————, 18——.

A. B., Justice of the Peace.

FORM OF AN INDORSEMENT ON THE FOREGOING.

Bail out to be given in the sum of ———— dollars.

A. B., Justice of the Peace.

FORM OF BAIL AFTER COMMITMENT.

TERRITORY OF MONTANA, } ss.
County of ————, }

Be it remembered, that on the —— day of ————, 18 ——, E. F., of ———— county, Territory of Montana, and G. H. and J. L., of ———— county, Territory of Montana, appeared personally before me, the undersigned, a justice of the peace of ———— county, and severally and jointly acknowledged themselves indebted to the Territory of Montana in the sum of ———— dollars, to be made levied upon their respective goods and chattels, lands and tenements; to be void, however, if the said E. F., who has been committed to the common jail of ———— county, shall personally be and appear at the next term of the district court of ———— county, on the —— day thereof: to answer an indictment to be prepared against him for the offence of ————, and to do and receive what shall be by said court enjoined upon him, and shall not depart the said court without leave.

Witness our hands this —— day of ————, 18——.

E. F.
G. H.
J. L.

Taken, and subscribed, and acknowledged, the day and year first above written.

A. B., Justice of the Peace.

FORM OF COMMITMENT OF WITNESSES FOR REFUSING TO ENTER INTO A RECOGNIZANCE.

TERRITORY OF MONTANA, } ss.
County of ————, }

In the name and by the authority of the Territory of Montana:

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To any constable of said county, and to the keeper of the common jail thereof:

We command you, the said constable, forthwith to convey and deliver into the custody of the said keeper the body of C. D.; it appearing by the examination of the said C. D., on oath before me, one of the justices of the peace of said county, that he is a material witness against the said E. F., on a charge of ————————, and it having been adjudged by me that the said offence has been committed, and that there is probable cause to believe the said E. F. to be guilty thereof; and the said C. D. having been required to enter into recognizance in the sum of ———— dollars for his personal appearance at the next term of the district court of ———— county, on the first day thereof, to give evidence on behalf of the Territory against the said E. F. for the offence aforesaid, with which requisition the said C. D. has refused to comply. And you, the said keeper of the said jail, are hereby required to receive the said C. D. into your custody in the said jail, and him safely keep until he shall enter into such recognizance, or be otherwise discharged according to law.

Given under my hand this —— day of ————, 18——.

A. B., Justice of the Peace.

FORM OF WARRANT TO DISCHARGE A PRISONER UPON HIS FINDING SURETIES AFTER COMMITMENT.

TERRITORY OF MONTANA, County of ————, } ss.

In the name and by the authority of the Territory of Montana: To the keeper of the common jail of said county:

Discharge from imprisonment E. F., if detained in your custody for no other cause than what is mentioned in the warrant for his commitment under the hand of A. B., Justice of the Peace, dated the —— day of ————, 18——.

Given under my hand this —— day of ————, 18——.

A. B., Justice of the Peace.

[Approved February 9, 1865.]

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AN ACT concerning Limitations.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Civil actions can only be commenced within the periods prescribed by this act, after the cause of action shall have accrued, except where a different limitation is prescribed by statute.

SEC. 2. No action for the recovery of mining claims, (lode claims excepted,) or for the recovery of possession thereof, unless that it appear that the plaintiff or his assigns was seized or possessed of such mining claims within one year before the commencement of such action.

SEC. 3. Any peaceable entry upon real estate shall be deemed sufficient and valid as a claim unless an action be commenced by the plaintiff for possession within one year from the making of such entry, or within three years from the time when the right to bring such action occurred.

SEC. 4. In every action for the recovery of real property or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law, and the occupation of the premises by another shall be deemed to have been under such legal title, unless it appear that such premises shall have been held and possessed adversely to such legal title for three years before the commencement of the action.

SEC. 5. For the purpose of constituting an adverse possession by any person claiming a title, founded upon a written instrument or judgment, or decree laid, it shall be deemed to have been possessed and occupied in the following cases: First, Where it has been usually cultivated and improved. Second, Where it has been protected by a substantial enclosure. Third, Where (although not enclosed) it has been used for the purposes of husbandry or pasturage, or for the ordinary uses of the occupant. Fourth, When a known lot or single farm not exceeding one hundred and sixty acres in extent has been partly improved, the portion of such farm

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or lot that may have been left, not cleared, or not enclosed according to the usual course or custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

SEC. 6. When it shall appear that there has been an actual continued occupation of the premises under a claim of title, exclusive of any other right, but not founded upon any written instrument or judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

SEC. 7. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only: First, When it has been enclosed by a good and substantial fence. Second, When it has been usually cultivated or improved.

SEC. 8. Actions other than those for the recovery of real property within two years, an action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States, when it shall appear from the record thereof, that the defendant has been personally served with process, or has appeared to the action, upon which such judgment or decree was rendered, within four years upon any contract, obligation, or liability founded upon an instrument, except those mentioned in the preceding section, within three years: First, An action for waste or trespass upon real property. Second, An action upon a liability created by a statute, other than a penalty or forfeiture. Third, An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property. Fourth, An action for relief on the ground of fraud. The cause of action in such case shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud. within two years: First, An action against a sheriff, coroner or constable upon the liability incurred by the doing of any act in his official capacity, and in virtue of his office or by the omission of an official duty. Second, An action upon a contract, obligation or liability not grounded upon an instrument of writing. Third, An action upon a statute for a penalty or a forfeiture, when the action is given to an individual, or to an individual and the Territory, except where the statute imposing it prescribes a different limitation.

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Fourth, An action for libel, slander, assault, battery, or false imprisonment. Fifth, An action against a sheriff, or other officer for the escape of a prisoner arrested or imprisoned in civil process. Sixth, An action upon any amount for goods, wares or merchandise, sold and delivered, and upon any express or implied promise, not above enumerated.

SEC. 9. Actions upon any indebtedness, liability, contract, express or implied, or upon any instrument in writing given by any person prior to his arrival in this Territory, shall be commenced within three months after the same shall have accrued, and become due and payable, and not afterward.

SEC. 10. The preceding provision shall not apply to, or effect any contract, liability or indebtedness, which may exist or may hereafter exist in relation to, or upon any purchase, sale or bargain for goods or personal property bought or purchased, or bargained for with the intention to bring, or for having brought such goods or property into this Territory.

SEC. 11. An action for relief not hereinbefore provided for, must be commenced within three years after the cause of action shall have accrued.

SEC. 12. The limitations prescribed in this act shall apply to actions brought in the name of the Territory, or for the benefit of the Territory, in the same manner as to actions brought by private parties.

SEC. 13. If when the cause of action shall accrue against a person when he is out of the Territory, the action may be commenced within the time herein limited after his return to the Territory; and if after the cause of action shall have accrued, he depart from this Territory, the time of his absence shall not be a part of the time limited for the commencement of the action.

SEC. 14. If a person entitled to bring an action mentioned in this act, other than for a penalty or forfeiture, or against a sheriff or other officer for an escape, be at the time the cause of action accrued, either: First, Within the age of twenty-one years; Second, Insane; or, Third, A married woman: The time of such disability shall not be a part of the time limited for the commencement of the action.

SEC. 15. If a person entitled to bring an action, die before the expiration of the time limited for the commencement thereof, and

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the cause of action survive, an action may be commenced by his representatives after the expiration of that time, and within one year after the time of his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his executors or administrators, after the expiration of that time and within one year after the issuing letters testamentary or of administration.

SEC. 16. When a person shall be an alien, subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the time limited for the commencement of the action

SEC. 17. If the action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be rendered on error or appeal, the plaintiff, or if he die, and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

SEC. 18. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

SEC. 19. No person shall avail himself of a disability unless it existed at the time his right of action accrued.

SEC. 20. When two or more disabilities co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 21. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this act, unless the same is contained in some writing signed by the party to be charged thereby, but this act shall not alter the effect of any payment of principal or interest.

SEC. 22. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment shall be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

SEC. 23. When the cause of action shall have arisen in any other State or Territory of the United States, or in a foreign coun-

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try, and by the laws thereof, an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be commenced against him in this Territory.

SEC. 24. No action founded upon any judgment or decree of any court outside of this Territory shall be commenced after the expiration of one year from the rendition thereof.

SEC. 25. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 9, 1865.]

AN ACT amendatory to an Act entitled an Act in relation to Conveyances.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That any citizen, by deed, mortgage, or other conveyance, conveying property situated in this Territory, who has a wife living in any other State or Territory, can convey the full title to such property by his own signature, and the want of the signature of the said wife shall in no wise invalidate said conveyance.

SEC. 2. This act shall take effect and be in force from and after the date of its passage.

[Approved Febraary 9, 1865.]

AN ACT regulating the fees of Officers, Jurors, and Witnesses.

Be it enacted by the Legislative Assembly of the Territory of Montana:

FEES OF THE CLERK OF THE DISTRICT COURT.

Filing each paper required to be filed,	$0.20
For issuing summons, or other process not herein expressly named, and sealing the same,	1.00
For subpœna, provided that only one subpœna shall be issued on the part of the plaintiff or defendant unless requested by the parties,	1.00

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For taking appeal bonds,	$1.50
For taking bonds for costs,	75
Filing and opening each deposition,	25
Entering each suit on docket on trial,	1.00
For entering each order, default, or rule of court,	75
For each discontinuance or non suit,	75
For each dedimus to take depositions,	1.50
For calling and swearing each jury,	50
For swearing each witness in court,	25
For swearing any person to an affidavit and filing the same,	50
For entering each final judgment in a case,	50
For entering each decree in chancery per folio of one hundred words,	20
For issuing each writ of habeas corpus, certiorari or procurdendo,	1.50
For issuing each writ of injunction, ques warranto, or mandamus,	2.00
For assessing the damages on any bond, note, or other instrument for the payment of money by order of court, and making a report thereof, and filing said report,	75
For extending special bail of record in each case,	30
For swearing an officer to take charge of a jury,	25
For issuing an execution,	1.50
For docketing the same,	25
For extending the sheriff's return on each execution,	40
For entering satisfaction of judgment,	40
For entering the report of commissioners or referees, or the award of arbitrators, and all other special entries per folio of one hundred words,	30
For each certificate and seal other than the process of the court,	1.00
For taking and approving appeal, or any other bond, each,	1.50
For entering appearance of attorney,	25
For each attachment for a witness or other person,	1.00
For each venire facias,	1.00
For making bill of costs per each exception,	
Entering the same of record in the fee book, being over charge,	50
For making complete record per each folio of one hundred words,	20

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For making copy of any paper in any case per folio of one hundred words,	20
For certifying and sealing the same when required,	1.00
For taking depositions per folio, and certifying the same,	20
For taking acknowledgments of deeds, powers of attorney, or other instrument in writing, and certifying the sealing of the same,	1.00
For filing and recording declaration of intent to become a citizen of the United States,	2.00
For final naturalization papers, including oath, recording copy, certificate and seal,	6.00
For taking each recognizance in court and entering the same of record,	75
For arraigning prisoner at the bar,	50
For entering judgment of conviction,	1.00
For copy of indictment registered per folio,	25
For entering discharge of recognizance,	50
For copies of the lists of grand and petit jurors when requested in a criminal case,	40
For entering attorneys on roll, administering oath, certificate and seal,	5.00

SHERIFF'S FEES.

For serving and returning of summons on each party,	1.50
For serving subpœna on each witness,	75
For advertising property for sale,	2.00
For entering each writ or other process,	50
For each mile traveled in all cases,	50
For levying execution,	1.25
For serving and returning sire facias,	1.25
For committing or discharging any prisoner to or from jail,	1.00
For dieting prisoners per day,	4.00
For attending before any judge with prisoner with writ of habeas corpus,	1.25
For each mile traveled on such service,	50
For serving writ of possession with aid of posse comitatus,	5.00
For serving the same without such aid,	2.00
For attending district and county courts, to be allowed and paid out of the county treasury, per day,	3.00

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For executing and acknowledging deed of sale of real estate,	3.00
For making certificate of sale previous to execution of deed,	1.00
For taking replevin forthcoming or other bond,	1.50
For executing capias or warrant in criminal cases,	2.50
For serving declaration in ejectment and proper return for each defendant,	1.50
For transporting prisoners per mile,	75
For summoning jurors each,	75
Commissions on money collected without sale.	
On all sums under five hundred dollars,	3½ p. c.
On all sums over five hundred dollars and under one thousand dollars,	2½ p. c.
On all sums over one thousand dollars,	2 p. c.
Commissions on money collected by sale.	
On all sums under five hundred dollars,	6 p. c.
On all sums over five hundred dollars and under one thousand dollars,	5 p. c.
On all sums over one thousand dollars,	2½ p. c.

Witness Fees.

Every witness attending in his own county in any court of record, or before a commissioner or referee, per day,	4.00
In a justices' court,	4.00
Mileage in going and returning per mile,	40

Juror's Fees.

In district or county courts per day,	4.00
Mileage per each mile travelled,	40
Before justice of the peace per day,	4.00
Attending inquest over a dead body when summoned by the coroner, to be paid out of the county treasury,	4.00

Probate Justice's Fees.

For all civil cases the same fees as other justices of the peace; for the appointing of executors or administrators, guardians, or trustees, and certifying the same, he shall be allowed,	1.50

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For granting letters testamentary or of administration, affixing seal thereunto, and recording the same,	1.50
Administering oath to each executor or administrator,	25
For each certificate,	1.00
Taking proof of a codicil, credit proved substantially,	2.50
Endorsing certificate of probate on codicil,	30
Recording any will, codicil, or other paper not herein otherwise provided for, per one hundred words,	20
Examining and approving each inventory, sale, bill, or account current filed by executor or administrator,	2.50
Entering the settlement of executors and administrators on the order book,	2.00
Each copy of the settlement of executors or administrators, with certificate and seal,	1.50
For each decree limiting the time for exhibiting the claims of creditors,	50
For each order of distribution,	75
For copies of exemplification of records for every one hundred words,	20
Official certificate and seal,	1.00
Making out an order for publication,	50
For allowing an appeal to district court,	40
For issuing each special writ or summons, with seal,	1.50
For administering oath to each witness,	25
For swearing any person to affidavit and certificate thereof,	50
Issuing subpœna under seal,	1.00
Entering each order, decree, or judgment,	75
Filing paper belonging to the settlement of any estate,	25
Issuing letters of guardianship or trusteeship,	1.50
Taking and approving bond of guardian or trustee,	1.25
Taking any bond not hereinbefore specified,	1.00
Revoking letters testamentary, guardianship or trusteeship,	1.00
Swearing each jury,	40
Taking acknowledgments of instruments of writing,	1.00
Every original writ under seal not otherwise provided for,	1.50
Precept for jury,	1.00
Taking verdict,	40
Allowing or disallowing demand against an estate,	60
Every continuance,	50
Solemnizing marriages,	10.00

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Treasurer's Fees.

The county treasurer shall receive the following compensation for collecting taxes:

Twelve and one-half per cent. on the first three thousand dollars.

Ten per cent. on the amount between three and four thousand dollars.

Six per cent. on the amount between four and five thousand dollars.

Four per cent. on all sums over five thousand dollars and under ten thousand dollars.

Three per cent. on all sums over ten thousand dollars.

Four per cent. for receiving and paying out all money otherwise than taxes and school funds.

For every mile travelled in going to and returning to make settlements with Territorial treasurer and auditor and to make deposits of Territorial revenue, thirty cents.

County Clerks' Fees.

The county clerk shall be and is hereby authorized to receive the same fees as the clerks of the district courts for like services.

For entering each order of court,	75
Administering each oath,	25
Each certificate and seal,	1.00
For each bond and license,	2.50
For taking proof in case of estrays, and granting certificate of the same,	1.50
For advertisement, including copy for newspaper publication,	1.50
For every certificate of magistracy under seal,	1.00

County Recorders' Fees.

For every instrument authorized to be recorded, first one hundred words,	1.00
For each additional folio,	50
Each entry in index,	25
Certificate of record,	2:00
Recording marriage certificate,	1.00

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Taking acknowledgment,	1.00
Copies of record per one hundred works,	30
For making any search when no certificate is given,	50
Recording town plats for first one hundred lots or less,	5.00
For each additional lot,	5
For making abstract of title for each conveyance,	1.50

FEES OF PROSECUTING ATTORNEY.

In all civil cases a docket fee of	5.00
All collections for Territory or county under five hundred dollars,	15 p. c.
All over five hundred dollars,	10 p. c.
Docket fees before justice of the peace,	$ 5.00
Convictions of misdemeanors,	15.00
Convictions for felony,	30.00
Convictions in capital cases,	50.00
Per diem for each day necessarily employed in attending causes on change of venues,	10.00
Docket fees in all cases not above specified, where county attorney is required to prosecute or defend in district courts,	20.00
For drawing each indictment,	10.00

Provided that no fee shall be allowed for drawing any indictment that may be quashed.

The above fees shall be taxed as costs in the case.

FEES OF THE JUSTICE OF THE PEACE.

Docketing case,	50
For issuing writs and summons for one person,	1.50
Each additional person named therein,	1.00
Order of arrest,	1.00
Attachment against the person for contempt,	1.50
Attachment against property,	1.50
Mittimus,	1.50
Writ of replevin and bond for the same,	2.50
Subpœna for one person,	1.50
For each additional person,	40
Venire for jury,	1.25

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Execution,	1.00
Writs of restitution,	1.25
Warrants for one person in criminal cases,	1.50
For each additional person therein named,	50
Order on jailer for person or persons,	60
Writs of forcible entry and detainer, or forcible detainer only,	1.50
Every other writ required by law,	1.25
Entries on docket each adjournment,	50
Judgments on merits or for costs,	50
Dismission or discontinuances,	50
Satisfaction of judgment,	50
Transferring judgment on docket,	50
Appointing guardian ad litem for a minor,	75
Taking verdict,	40
Each motion decided by justice,	40
Making up docket each one hundred words, certificates, copies, and oaths certifying affidavits,	40
Certifying depositions, transcript of docket entries, and every other record not otherwise specified by law,	75
Transcript of docket, and copies of every writing on record, each one hundred words,	30
Swearing jury,	50
Swearing each witness, arbitrator, referee, or appraiser,	25
Miscellaneous filing each paper required to be preserved by a justice,	25
Each bond of undertaking,	1.00
Each recognizance,	50
Appointing special constables or appraisers each,	50
Acknowledgments of deeds and other instruments in writing,	1.00
Trying cause of forcible entry and detainer or detainer only,	4.00
Trying criminal cases,	4.00
Trying civil cases without a jury,	3.00
Trying civil cases with a jury,	3.00
Taking depositions, for the first one hundred words,	75
For each additional one hundred words,	30
Entering an appeal,	40
Transmitting papers when required by law,	50
Selecting jury,	50
Performing duties as coroner same fees as coroner,	
Marrying and making returns,	10.00

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Fees of Constables.

The same fees as are allowed to sheriffs for like services.

Fees of Coroners.

Coroners shall be allowed ten dollars for each inquest, and thirty cents per mile for each mile necessarily travelled in going to and returning from the place of inquest, to be paid by the county. For all services performed in the place of the sheriff, the same fees as are allowed to the sheriff for his services.

Fees of Notaries Public.

For noting a bond, bill of exchange, or promissory note for protest,	1.50
For each protest and record of the same,	1.75
For each notice of protest,	1.00
For each certificate and seal,	1.00

For all other cases the same fees as justices of the peace for like services.

Fees of Judges and Clerks of Elections.

Each judge and clerk of election shall be entitled to six dollars per day for each days' service as such judge or clerk, to be paid out of the county treasury.

Each messenger conveying election returns to the clerk of the county shall be entitled to the same per diem as the judges and clerks, and thirty cents per mile for the distance necessary to be travelled in going to and returning from the office of said county clerk.

Fees of Masters in Chancery.

For hearing each application for a writ of injunction, or other writ,	8.00
For report and opinion in every case referred to him to take proof,	8.00

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For taking depositions either in cases referred or to be used in courts, for each one hundred words, including certificates, 40

For the attendance to take depositions at the request of any party, whether depositions are taken or not, per diem, 8.00

This act shall take effect from and after its passage.

[Approved February 9, 1865.]

AN ACT concerning Conveyances.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Conveyances of land or of any estate or interest thereon, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as hereinafter directed.

SEC. 2. A husband and wife may by their joint deed convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried.

SEC. 3. Every conveyance in writing whereby any real estate is conveyed, or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided.

SEC. 4. The proof or acknowledgment of every conveyance affecting any real estate, shall be taken by some one of the following officers: First, If acknowledged or proved within this Territory, by some judge or clerk of a court having a seal, or by some notary public or justice of the peace of the proper county. Second, If acknowledged or proved without this Territory and within the United States, by some judge or clerk of any court of the United States, or of any State or Territory, having a seal, or by any commissioner appointed by the governor of this Territory for that purpose. Third, If acknowledged or proved without the United States, by some judge or clerk of any court of any state, kingdom or empire, having a seal, or by any notary public therein, or by any

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minister, commissioner or consul of the United States appointed to reside therein.

SEC. 5. Every officer who shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance. Such certificate shall be, when granted by any judge or clerk, under the hand of such judge or clerk and the seal of the court; when granted by any officer who has a seal of office, under the hand and official seal of such officer.

SEC 6. No acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance, as a party thereto, or shall be proved to be such by oath or affirmation of a credible witness.

SEC.. 7. The certificate of acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

SEC. 8. Such certificate shall be substantially in the following form, to wit:

TERRITORY OF MONTANA, } ss.
County of ——, }

On this —— day of ——, A. D. 18——, personally appeared before me, a notary public, (judge or other officer as the case may be,) in and for said county, A. B., personally known to me to be the person described in, and who executed the foregoing instrument; and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

SEC. 9. When the grantor is unknown to the judge or other officer taking the acknowledgment, the certificate may be in the following form, to wit:

TERRITORY OF MONTANA, } ss.
County of ——, }

On this —— day of ——, A. D. 18——, personally ap-

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peared before me, a notary public, (judge or other officer) in and for said county, A. B., satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

SEC. 10. The proof of the execution of any conveyance, whereby any real estate is conveyed or affected, shall be: First, By the testimony of a subscribing witness; or, (Second, When all the subscribing witnesses are dead, or) cannot be had, by evidence of the handwriting of the party, and at least one subscribing witness.

SEC. 11. No proof of a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof, to be the person whose name is subscribed to the conveyance as witness thereto, or shall be proved to be such by the oath or affirmation of a credible person.

SEC. 12. No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party, is the person described in, and who executed the same, that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

SEC. 13. The certificate of such proof shall set forth the following matters: First, The fact that such subscribing witness was known to the officer granting the certificate, to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate. Second. The proof given by such witness of the execution of such conveyance, and of the facts that the person whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

SEC. 14. No proof of evidence of the handwriting of the party, and of a subscribing witness, shall be taken unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

SEC. 15. No certificate of such proof shall be granted, unless

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a competent and credible witness shall state on oath or affirmation that he personally knew the person whose name is subscribed thereto as a party, well knew his signature, (stating his means of knowledge,) and believes the name of the person subscribed thereto as a party, was subscribed by such person, nor unless a competent and credible witness shall in like manner state that he personally knew the person, whose name is subscribed to such conveyance as a witness, well knew his signature, (and stating his means of knowledge,) and believes the name subscribed thereto as a witness was thereto subscribed by such person.

SEC. 16. Upon the application of any grantee in any conveyance required by this act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant that any witness to such conveyance residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment for proof of such conveyance, may issue a subpœna requiring such witness to appear before such officer and testify touching the execution thereof.

SEC. 17. Every person who, being served with a subpœna, shall without reasonable cause refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matter aforesaid, shall be liable to the party injured, in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain, without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is taken, unless his reasonable expenses be first tendered.

SEC. 18. A certificate of the acknowledgment of any conveyance, or the proof of the execution thereof, as provided in this act, signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this Territory.

SEC. 19. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself

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and by her husband, and certified in the manner hereinafter provided, by the proper officer taking the acknowledgment.

SEC. 20. Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, may take and certify the acknowledgment of a married woman to such conveyance of real estate.

SEC. 21. No such acknowledgment shall be taken unless such married woman shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on examination apart from and without the hearing of her husband, and that she does not wish to retract the execution of the same.

SEC. 22. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged on examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this act shall be valid.

SEC. 23. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, may be effected, proved, acknowledged, and certified in the manner prescribed in this act to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

SEC 24. Every such conveyance and instrument in writing, acknowledged or proved and certified, and recorded in the manner prescribed in this act, from the time of filing the same with the recorder for record shall impart notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

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SEC. 25. Every conveyance of real estate within this Territory hereafter made which shall not be recorded as provided for in this act, shall be deemed void as against any subsequent purchaser in good faith, and for a valuable consideration of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

SEC. 26. Every power of attorney, or other instrument in writing, containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another any conveyance whereby any real estate is conveyed or may be affected, shall be acknowledged or proved, and certified and recorded as other conveyances whereby any real estate is conveyed or affected, are required to be acknowledged or proved and certified and recorded.

SEC. 27. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

SEC. 28. Every conveyance, or other instrument conveying or affecting real estate, which shall be acknowledged or proved and certified as hereinafter prescribed, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

SEC. 29. When any such conveyance or instrument is acknowledged or proved, certified and recorded in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

SEC. 30. Neither the certificate of the acknowledgment nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument shall be conclusive, but the same may be rebutted.

SEC. 31. If the party contesting the proof of any such conveyance or instrument shall make it appear that any such proof was taken upon the oath by an incompetent witness, neither such

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conveyance or instrument nor the record thereof shall be received on evidence until established by other competent proof.

SEC. 32. If any person convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

SEC. 33. Any person claiming the title to any real estate may, notwithstanding there may be an advised possession thereof, sell and convey his interest therein in the manner and with the same effect as if he was in usual possession of the same.

SEC. 34. The term real estate as used in this act shall be construed as co-extensive in meaning with lands, tenements, hereditaments, and possessory titles to public lands in this Territory.

SEC. 35. The term "conveyance" as used in this act shall be construed to embrace every instrument in writing by which any real estate or interest in real estate is created, alienated, mortgaged, or assigned, except wills, leases for a term not exceeding one year, and executory contracts for the sale or purchase of lands.

SEC. 36. Any mortgage that has been or may be hereafter recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder or his deputy, who shall subscribe the same as a witness. Such entry shall have the same effect as a deed of release duly acknowledged and recorded.

SEC. 37. Any mortgage shall also be discharged upon the record thereof by the recorder in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as herein before prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

SEC. 38. Every such certificate, and the proof and acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record in the minutes of the

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discharge of such mortgage made by the recorder upon the margin of the record thereof.

SEC. 39. Any mortgagee, or his personal representative, or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall for the space of seven days after being thereto requested refuse or neglect to execute and acknowledge a certificate of discharge or release thereto, shall be liable to the mortgageor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

SEC. 40. All conveyances of real estate heretofore made and acknowledged or proved according to the laws in force at the time of such making and acknowledgment of proof, shall have the same force as evidence, and be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this act.

SEC. 41. The legality of the execution, acknowledgment, proof from, or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this act, but shall depend for its validity or legality upon the laws then existing and in force.

SEC. 42. Every interest in real estate granted of devised to two or persons, other than executors or trustees, as such shall be a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

SEC. 43. The term "heirs," or other words of inheritance shall not be necessary to create or convey an estate in fee simple, and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor unless the intent to pass a less estate shall appear by express terms or be necessarily implied in the terms of the grant.

SEC. 44. When a remainder in land or tenements, goods or chattels, shall be limited by deed or otherwise, to take effect on the death of any person without heir or heirs of his or her body, or without issue, the word "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

SEC. 45. A future estate depending on the contingency of the death of any person without heirs or issue or children, shall be

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defeated by the birth of a posthumous child of such person capable of taking a descent.

SEC. 46. When an estate shall by any conveyance be limited in remainder to the son or daughter or issue, or to the use of the son or daughter or issue, to be begotten, such son or daughter or issue born after the decease of his or her father, shall take the estate in the same proportion and in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death.

SEC. 47. Grants of rents, or of reversions or remainders, shall be good and effectual without attornment of the tenants, but no tenant who before the notice of the grant shall have paid rent to the grantor shall suffer any damage thereby.

SEC. 48. The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenement or in pursuance to or in consequence of a judgment or decree of some court of competent jurisdiction.

SEC. 49. Lineal or collateral warranters with all their incidents are abolished, but the heirs and devises of every person who shall have made any covenant or agreement in reference of the title of, in, or to any real estate, shall be answerable upon such covenant or agreement, to the extent of the land descended or devised to them in the case, and in the manner prescribed by law.

SEC. 50. The words "grant," "bargain," and "sell," in all conveyances hereafter made, in and by which any estate or inheritance, possessory title or fee simple, is to be passed, shall, unless restrained by express terms contained in such conveyance, be construed to be the following express covenants, and none other on the part of the grantor, for himself, his heirs and assigns, to the grantee, his heirs and assigns: First, That previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate, or any right, title or interest therein, to any person other than the grantee. Second, That such real estate is at the time of the execution of such conveyance free from encumbrances, done, made or suffered by the grantor or any person claiming under him; and such covenant may be sued upon in the same manner as if they had been expressly interested in the conveyance.

SEC. 51. All instruments of writing mentioned in this act, now

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copied in the proper books of record of the several counties of this Territory, acknowledged and recorded in accordance with the laws in force and effect at the time such instruments so acknowledged and recorded, shall, after the passage of this act, be deemed to impart to subsequent purchasers and encumbrancers, and all other persons whomsover, notice of all such deeds, mortgages, power of attorney, or other instrument, so far as to the extent the same may be found recorded, copied or noted in the books of record.

SEC. 52. This act shall take effect and be in force from and after its approval by the governor.

[Approved February 9, 1865.]

AN ACT relating to Imprisonment for Debt.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be no imprisonment for debt in this Territory: and all laws or parts of acts conflicting herewith are hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

[Approved February 9, 1865.]

AN ACT concerning Partitions of Real Estate.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. When any lands, tenements or hereditaments shall be held in joint tenancy in common coparcenary, whether such right or title be derived by purchase, devise or descent, or whether any all or part of such claimants be of full age or minors, it shall be lawful for one or more of the persons interested, by themselves if of

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full age, or by their guardian if minors, to present to the district court of the county where such lands or tenements lie, or where the lands or tenements lie in different counties, in the district court of the county in which the major part of such lands lie, but if the major part of such lands do not lie in any one county, then to the district court of any county in which any of such lands lie, their petition praying for a division and partition of such premises according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that the partition cannot be made without great prejudice to the owners.

SEC. 2. The petition shall particularly describe the premises sought to be divided or sold, and shall set forth and make exhibits of the rights and titles of all parties interested therein, so far as the same are known to the petitioners, including tenants for years, or for life, by the courtesy or in dower, and of persons entitled to the reversions, remainder or inheritance, and of every person who upon any contingency may be, or become, entitled to any beneficiary interests in the premises, so far as the same are known to the petitioners; and such petitions shall be verified by affidavit.

SEC. 3. Every person having such interest as is specified in this act, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, shall be made a party to such petition.

SEC. 4. In cases where one or more of such parties shall be unknown, or the share or quantity of interest of any of the parties is unknown to the petitioner, or where such share or interest shall be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent so that such parties cannot be named, the same shall be so stated in the petition.

SEC. 5. All persons interested in the premises of which partition is sought to be made according to the provisions of this act, whose names are unknown, may be made parties to such petition, by the name and description of unknown owners or proprietors of the premises, or as the unknown heirs of any person who may have been interested in the same.

SEC. 6. All persons having such interests as are specified in this act in any premises of which partition is sought to be made, or the guardians of such as are under age who shall not have joined

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in the petition (and if any person so interested be under age, and without guardian, the court shall appoint a guardian *ad litem* for such minor), shall have notice of such application by summons duly served, which summons shall issue against such person by the name and the description given in the petition, and when the names of persons having any interest in such premises are unknown, and when parties whose names are known do not reside in this Territory, or cannot be found, they shall have further notice by advertisement as provided by law, and after such advertisement the court shall proceed to act in the premises as though the parties had been duly served with summons, or had been notified by their proper names.

SEC. 7. During the pendency of any such suit, or proceedings, any person claiming to be interested in the premises to be assigned or parted may appear and answer to petition, and assert his or her rights by law of interpleader, and the courts shall decide upon the rights of persons appearing as aforesaid, as though they had been made parties in the first instance.

SEC. 8. The court shall ascertain from the evidence in case of default or from confession by plea of the parties if they appear, or from the verdict from which any issues of fact shall be determined, and shall declare the rights, titles and interest of all the parties to such proceedings, petitioners as well as defendants, and give such judgments as may be required by the rights of the parties.

SEC. 9. The court, when it shall order a partition of any premises to be made under the provisions of this act, shall appoint three commissioners not connected with any of the parties either by consanguinity or affinity, and entirely disinterested, each of whom shall take an oath before the court or some justice of the peace, and fairly and impartially to make partition of said lands in accordance with the judgment of the court as to the rights and interests, if the same can be done consistently with the interests of the estate; and the said commissioners shall go upon the premises and make partition of said lands, tenements and hereditaments, assigning to each party his or her share, metes and bounds, and make report, which shall be under hand and seal, to the court, during the same or next succeeding term at which they were appointed, and the court may at the term when such report shall be made, make all such orders upon such reports as may be necessary to a final disposition of the case.

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SEC. 10. The commissioners to be appointed under this act, shall be allowed as a compensation for their services five dollars per day each, to be taxed as other costs.

SEC. 11. When any lands, houses or lots are so circumstanced that a division thereof cannot be made without manifest prejudice to the proprietors of the same, and the commissioners appointed to divide the same shall so report to the court, the court shall thereupon give an order to said commissioners or other person or persons to sell such lands, houses or lots, or houses and lots, at public vendue, upon such terms and by giving such notice of sale as the court shall direct, and who shall make and execute good and sufficient conveyances, to the purchaser or purchasers thereof, which shall operate as an effectual bar, both in law and equity, against such owners or proprietors, and all persons claiming under them; and the commissioners or persons making such sale shall report their proceedings to the court, and shall pay over the moneys arising therefrom, to the parties entitled to receive the same, under the direction of the court; the court to make such order in relation to costs as shall seem right.

SEC. 12. When a sale of lands or premises shall be made in accordance with the preceding section, and no person shall appear to claim such portion of the money as may belong to any nonresident or person whose name is unknown, the court shall thereupon require the money belonging to the persons not claiming as aforesaid, to be deposited in the treasury of the Territory, subject to the further order of the court; and all money required to be deposited as aforesaid shall be received by the Territorial treasurer, and paid out upon the order of the court.

SEC. 13. When money shall be deposited in the Territorial treasury under the provisions of this act, the person or persons so entitled to the same may at any time apply to the court making the order of such sale, and obtain an order from the same upon making satisfactory proof to the court of his, or her, or their right thereto.

SEC. 14. No plea in abatement shall be received in any suit for partition, nor shall such suit abate by death of any tenant.

SEC. 15. This act to take effect and be in force from and after its passage.

[Approved February 9, 1865.]

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AN ACT directing the Auditor to Issue Certain Warrants.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the Territorial auditor is hereby authorized and ordered to issue his warrants upon the Territorial treasurer for the amount due the members, clerks and other officers of the legislative assembly according to the pay-roll adopted by said assembly, of the several sums due said persons from the United States according to the Organic Act, and the secretary of the Territory is hereby ordered to pay into the Territorial treasury the amount drawn by said warrants drawn by said auditor from the funds furnished by the United States for contingent expenses in this Territory.

SEC. 3. This act shall take effect from and after its passage.

[Approved February 9, 1865.]

AN ACT concerning fraudulent Conveyances and Contracts.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Every conveyance of any estate or interest in lands, or the rents and profits of lands, and any charge upon lands, or upon the rents or profits thereof, made or executed with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits as against such purchasers, shall be void.

SEC. 2. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have legal notice thereof at the time of such purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud.

SEC. 3. Every conveyance or charge of or upon any estate or interest in lands containing any provision for vocation, determina-

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tion, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from said grantor for a valuable consideration, of any estate or interest so liable to be revoked, determined, or altered, although the same be not directly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

SEC. 4. When a power to revoke a conveyance of lands or rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, and profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of vacation were recited therein, and the intent to revoke the former conveyance expressly declared.

SEC. 5. If a conveyance to a purchaser under either of the two last preceding sections shall be made before the person making the same shall be entitled to execute his power of vacation, it shall nevertheless be valid from the time the power of vacation shall actually rest in such person in the same manner and to the same extent as if then made.

SEC. 6. No estate or interest in lands other than for leases for a term not exceeding one year, or any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

SEC. 7. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor prevent any trust arising or being extinguished by operation of law.

SEC. 8. Every contract for the leasing for a longer term than one year, or for the sale of any lands or interest in lands shall be void unless the contract, or some note or memorandum thereof expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

SEC. 9. Every instrument required to be subscribed by any

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person mentioned in the last preceding section may be subscribed by the agent of the party lawfully authorized.

SEC. 10. Nothing contained in this act shall be construed to abridge the power of the court to compel the specific performance of such agreements.

SEC. 11. All deeds of gift, all conveyances and transfers or assignments, verbal or written, of goods, chattels, or things in action made in trust for the use of the person making the same, shall be void as against the creditors existing or subsequent of such person.

SEC. 12. In the following cases any agreement shall be void unless such agreement, or some note or memorandum thereof expressing the consideration, be in writing, and subscribed by the party charged thereunto: First, Every agreement that by the terms is not to be performed within one year from the making thereof. Second, Every special promise to answer for the debt or default or miscarriage of another. Third, Every agreement, promise, or undertaking made upon consideration of marriage except mutual promise to marry.

SEC. 13. Every contract for the sale of any goods, chattels, or things in action for the price of two hundred dollars and over shall be void unless, First, A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith, or Second, Unless they shall accept or receive a part of such goods or the evidences or some of them of such in action. Third, Or unless the buyer shall at the time pay some part of the purchase money.

SEC. 14. Whenever goods shall be sold at auction, and the auctioneer shall at the time of the sale enter in a sale book a memorandum specifying the nature and price of the property sold, the term of sale, the names of the purchasers, and name of the person on whose account the sale is made such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

SEC. 15. Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by the immediate delivery, and be followed by an actual and continued change of possession of the thing sold and assigned, shall be conclusive evi-

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dence of fraud as against the creditors of the vendor or the person making such assignments, or subsequent purchasers in good faith.

SEC. 16. The term creditors as used in the last section shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control.

SEC. 17. Every instrument of writing required by any of the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

SEC. 18. Every conveyance or assignment in writing or otherwise of any estate or interest in lands or in goods in action, or of the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and any bond or other evidences of debt given, suits commenced, decrees or judgments suffered, with the like intent as against the person hindered, delayed or defrauded, shall be void.

SEC. 19. Every conveyance, charge, instrument, or proceeding declared to be void by the provisions of this act, as against creditors or purchasers, shall be equally void as against the heirs, successors, and personal representatives or assigns of such creditors or purchasers.

SEC. 20. The question of fraudulent intent in all cases arising under this act shall be deemed a question of fact and not of law, nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers solely on the ground that it was not founded on a valuable consideration.

SEC. 21. The provisions of this act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

SEC. 22. The term "bonds" as used in this act shall be construed as co-extensive in meaning with land, tenements, hereditaments, and possessory land claims to public lands; and the terms "estate," and "interest in lands" shall be construed to embrace every estate and interest present and future vested and contingent in lands as above defined.

SEC. 23. The term "conveyance" as used in this act shall be

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construed to embrace any instrument in writing except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in land is created, alienated, assigned, or surrendered.

SEC. 24. This act to take effect and be in force from and after its passage.

[Approved February 9, 1865.]

AN ACT granting relief to Tax Payers.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That any corporation, person or persons within the Territory of Montana who heretofore have paid any taxes or licenses upon property therein, under the revenue laws of Idaho Territory, during the year eighteen hundred and sixty-four, shall, upon producing a lawful receipt therefor to the tax collector, be entitled to to have the amount thereof deducted from any taxes or license due and payable under existing laws levying taxes or lisences in this Territory, provided that the same shall be deducted from the taxes or licenses first due from such corporation, person or persons.

SEC. 2. This act shall take effect from and after its passage.

[Approved Febraary 9, 1865.]

AN ACT to amend an Act entitled an Act concerning Counties and County Officers.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. All that portion of section ten of an act entitled an act concerning counties and county officers after and including the word provided in line nineteen of said section, be and the same is hereby repealed.

SEC. 2. This act to take effect, and be in force, from and after its passage.

[Approved February 9, 1865.]

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AN ACT to provide for Contested Elections.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That if any candidate or elector of the proper county or representative or council district chooses to contest the validity of any election, or the rights of any person proclaimed duly elected to his seat in the council or house of representatives, such person shall give notice thereof, in writing, to the person whose election he intends to contest, or leave a written notice thereof at the house where such person last resided, within twenty days after the election, expressing the points on which the same will be contested, and the names of two justices of the peace who will officiate at the taking of depositions, and when and where they will attend to taking the same; and such notice shall be served at least five days before the day so pointed out therein for the taking of the depositions.

SEC. 2. That the said justices, or either of them, shall have power, and are hereby authorized and required to issue subpœnas to all persons whose testimony may be required by either of the parties, and the said two justices when met shall hear and certify, under seal, all testimony relative to such contested election to the speaker of the branch of the legislative assembly where the person whose seat is contested may be returned to serve at the next session.

SEC. That no person shall contest the election of any member of the council or house of representives unless he is an elector of that county or district from which the person is returned to serve. No testimony shall be received by the justices on the part of the person contesting the election which does not relate to the point specified in the notice, a copy of which notice shall be delivered to the said justices and by them transmitted to the speaker of the branch of the legislative assembly where the contest is to be decided, with the other documents.

SEC. 4. That the method to be pursued in contesting the election of any person declared duly elected sheriff, coroner, county

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auditor, county recorder, county treasurer, county commissioner, county assessor, or other officers, shall in every respect be similar to the method directed as aforesaid to be pursued in contesting the election of members of the council and house of representatives of the legislative assembly, save only that the testimony taken as aforesaid, and all matters relative to such contest, be sent to the probate court of the proper county on or before the second day of the term next ensuing the thirty days allowed in which to take depositions by the preceding sections; and the said probate court at the first term after the thirty days shall have expired, shall hear and determine the contest.

SEC. 5. That the judge who carries the poll book to the clerk of the probate court of the proper county shall be entitled to receive for the same twenty-five cents per mile from the place of election to the county seat, to be paid out of the county treasury.

SEC. 6. That if any officer charged with any duties under this act shall refuse or neglect to perform the duties required of him by this act, according to the true intent and meaning thereof, he shall, on conviction thereof before any court having recognizance to that amount, be fined in any sum at the discretion of the court, not exceeding two hundred dollars.

SEC. 7. That all fines and penalties imposed by this act shall be recovered with costs of suit in an action of debt for the use of the county.

SEC. 8. This act shall take effect and be in force from and after its passage.

[Approved February 9, 1865.]

AN ACT relating to Counties and County Officers.

ARTICLE I.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC 1. That each organized county within this Territory, shall be a body corporate and politic; and as such, shall be empowered for the following purposes: First, To sue and be sued. Second,

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To purchase and hold real and personal estate for the use of the county, and lands sold for taxes, as provided by law. Third, To sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants. Fourth, To make all contracts, and do all other acts in relation to the property and concerns, necessary to the exercise of its corporate or administrative powers. Fifth, To exercise such other and further powers, as may be especially conferred by law.

SEC. 2. Any real or personal estate, heretofore, or which may be hereafter, conveyed to any county, shall be deemed the property of such county.

SEC. 3. The powers of a county as a body corporate and politic, shall be exercised by a board of county commissioners. therefor.

SEC. 4. Each county organized for judicial purposes, shall, at its own expense, provide a suitable court-house, and a sufficient jail, and other necessary county buildings, and keep them in repair.

SEC. 5. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued, shall be, the board of commissioners of the county of ————, (the name of the county.) but this provision shall not prevent county officers, when authorized by law, from suing in their name of office, for the benefit of the county.

SEC. 6. In all legal proceedings against the county, process shall be served on the clerk of the board of county commissioners; and whenever such suit or proceeding shall be commenced, it shall be the duty of the clerk forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at their next meeting, all the information he may have in regard to such suit or proceeding.

SEC. 7. On the trial of any suit in which the county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent, and qualified according to law.

SEC 8. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, when the same shall be paid by the county, no execution

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shall issue upon said judgment; but the same shall be levied and paid by tax or other county charges; and when so collected, shall be paid by the county treasurer to the proper person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor: *Provided*, That execution may issue on said judgment, if payment be not made within sixty days after the time required, for the payment of county taxes to the county treasurer, by the proper officers of said county in each year.

SEC. 9 The board of county commissioners shall consist of three qualified electors, any two of whom shall be competent to transact business, who shall be elected according to law.

SEC. 10. At the first election had, to choose the first board of commissioners of any county, the person having the highest number of votes shall continue in office three years, the next highest two years, and the next highest one year; but if two or more persons have the same number of votes, then their terms shall be determined by lot, under the direction of the board of canvassers returning the election; and annually thereafter, one commissioner shall be elected, and shall continue in office three years: *Provided*, That the first election for county and township or precinct officers, shall be held on the first Monday in April, A. D. 1865, in the county of Madison, but in no other county in this Territory, at that time, and the time between the first Monday in April, A. D. 1865, and the first Monday in September, A. D. 1865, shall constitute the first year in said county of Madison, and the term of office of all officers, elected on the said first Monday in April, A. D. 1865, shall expire on the first Monday in September, A. D. 1865, or as soon thereafter as their successors shall be elected and qualified.

SEC. 11. Said board of county commissioners shall meet at the county seat of each county, on the first Monday in May, August, November and February in each year, and at such other times as they may deem expedient, and in the counties, the population of which is under ten thousand, such commissioner may sit six days in each term, but, if the population exceed ten thousand they may sit nine days, should the business require it: *Provided*, That at their first session they may sit not to exceed fifteen days.

SEC. 12. Each person elected as such commissioner, shall, on receiving a certificate of his election, take an oath to support the

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Constitution of the United States and the Organic Act of this Territory, and to perform the duties of his office to the best of his ability, which oath being indorsed upon said certificate under the hand and seal of the person administering it, shall be sufficient for said person to act as said commissioner.

SEC. 13. Each member of the board of county commissioners, shall be paid by the county, a compensation for his services and expenses, in attending the meetings of said board, at the rate of ten dollars per day for the time he shall actually attend, as hereinbefore limited and prescribed, including the time necessary in going to and returning from the same. They shall also be entitled to twenty cents per mile for the distance actually travelled, in going to and returning from the county seat.

SEC. 14. The board of county commissioners of each county, shall have power at any meeting: First, To make such orders concerning the property belonging to the county as they may deem expedient. Second, To examine and settle all accounts of the receipts and expenses of the county, and to examine, settle and allow all accounts chargeable against the county; and when so settled, they may issue county orders therefor, as provided by law. Third, To build and keep in repair county buildings, and cause the same to be insured in the name of the county treasurer for the benefit of the county, and in case there be no county buildings, to provide suitable rooms for county purposes. Fourth, Apportion and order the levying of taxes, as provided by law, and to borrow money upon the credit of the county, a sum sufficient for the erection of county buildings, or to meet the current expenses of the county, in case of a deficit in the county revenue. Fifth, To represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law. Sixth, To set off, organize and change the boundaries of townships in their respective counties, designate and give names to them, and to fix the time and place of holding the first election therein. Seventh, To establish one or more election precincts in any township, as the convenience of the inhabitants may require. Eighth, To lay out, alter or discontinue any road running through one or more townships in such county, and to perform such other duties respecting roads as may be required by law. Ninth, To grant licenses for keeping ferries

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in their respective counties, and such other licenses as may be prescribed by law. Tenth, To perform such other duties as are or may be prescribed by law.

SEC. 15. The board of county commissioners shall not borrow money for the purpose specified in the fourth subdivision of section fourteen of this act, without having first submitted the question of such loan to a vote of the electors of the county.

SEC. 16. Whenever it shall become necessary, under the provisions of this act, to submit to a vote of the electors of any county, the question of raising any sum of money by a loan, the said board, after having determined the sum necessary to be raised, shall cause notice of such determination, and of the time when the question will be submitted to the electors of the county, by written or printed hand-bills, posted up in five of the most public places in each township, for at least thirty days previous to the time fixed for taking such vote.

SEC. 17. At the time specified in such notice, a vote of the electors of such county shall be taken at the place designated in the notice. The inspectors receiving the votes shall be the same as required at the general election, and the vote shall be canvassed by the same officers, and in the same manner, as required at such general election, and the result of such vote shall be certified by them, and transmitted to the county clerk, within ten days after such vote shall be taken, which certified statement shall be delivered by said clerk to the board of county commissioners, at their next meeting. All voting in the several townships as provided in this section, shall be by ballot, and those voting in favor of such proposed loan, shall have written or printed on their ballots, "*For the loan*"; and those voting against the loan, shall have written or printed on their ballots, "*Against the loan*"; and if a majority of the votes cast at such election shall be "against the loan," it shall not be made.

SEC. 18. The board of county commissioners shall not set off or organize any new township unless a petition be first presented to the board, signed by at least fifty citizens resident therein.

SEC. 19. The board of county commissioners shall alter and change the township organization of their county so as to agree with the standard fixed in the preceding sections in respect to the territory and population if such change be desired by the citizens

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of the county, on a petition of a majority of legal voters being presented to the board of county commissioners.

SEC. 20. Every board of county commissioners shall have a seal, or scroll until a seal can be procured, and may alter the same at pleasure. They shall sit with open doors, and all persons conducting themselves in an orderly manner may attend their meetings; and they may establish rules and regulations to govern the transactions of their business.

SEC. 21. They shall at the first meeting after their election, and after every annual election, choose one of their number chairman, who shall preside at such meeting, and all other meetings during the year, if present; but in case of his absence from any such meeting the members present shall choose one of their number as temporary chairman.

SEC. 22. The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties, and he shall sign all county orders.

SEC. 23. No account shall be allowed by the board of county commissioners unless the same be made out in separate items, and the nature of each item stated; and where no specified fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account so made out shall be verified by affidavit. *Provided*, That nothing in this section shall be construed to prevent any such board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof as they may think proper.

SEC. 24. County orders shall be signed by the chairman and attested by the clerk, and shall specify the nature of the claim or service for which they were issued.

SEC. 25. Whenever any claim of any person against a county shall be disallowed, in whole or in part, by the board of commissioners, such person may appeal from the decision of such board, to the district court for the same county, by causing a written notice of such appeal to be served on the clerk of such board within thirty days after the making of such decision, and executing a bond to such county, with sufficient security to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal

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and the payment of all costs that shall be adjudged against the appellant.

SEC. 26. The clerk of the board, upon such an appeal being taken shall immediately give notice thereof to the county attorney, and shall make out a brief return of the proceedings in the case before the board, with their decision thereon, and shall file the same, together with the bond and all the papers in the case, in his possession, with the clerk of the district court; and such appeal shall be entered, tried and determined, the same as appeals from justices' courts, and costs shall be awarded in like manner.

SEC. 27. The board of commissioners of their respective counties, shall, at the expense of the county, furnish annually and in due season, to the assessor of the county, suitable blank assessment rolls for the several townships, prepared in accordance with the provisions of law, and shall also provide suitable books and stationery for the use of the county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents and papers belonging to each of said officers, and also official seals for each of said officers, when the same are required by law.

SEC. 28. The board of county commissioners, at their annual May session, or oftener if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record opposite to the entry of each order issued, the date when the same was cancelled; they shall also make a list of the orders so cancelled, specifying the number, date, amount, and the person to whom the same was payable, and enter the same on the journal of the board.

SEC. 29. The boards of commissioners of their respective counties, shall cause to be made and published, yearly, in at least one newspaper in the county, if such there be, a report of receipts and expenditures of the year last preceding, and the amounts allowed; but if there be no newspaper printed in said county, their statement shall be posted in at least five public places in said county.

SEC. 30. If any commissioner shall refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the board of county commissioners, without

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just cause therefor, he shall for each offence forfeit a sum not less than twenty-five dollars, nor more than one hundred dollars.

SEC. 31. Whenever any board of commissioners shall organize new townships, or alter the boundaries of any townships in their county, they shall cause a plat and record thereof to be made by their clerk, specifying the name and boundaries of such township, which plat and record shall be kept in the office of said clerk, and a copy thereof under the seal of said board, shall be made by said clerk and filed with the proper officer of said township.

SEC. 32. It shall be the general duty of the clerk of the board of commissioners: First, To record, in a book to be provided for that purpose, all proceedings of the board. Second, To make regular entries of all their resolutions and decisions, in all questions concerning the raising of money. Third, To record the vote of each commissioner on any question submitted to the board, if required by any member. Fourth, Sign all orders issued by the board for the payment of money, and to record in a book to be provided for that purpose, the receipts and expenditures of the county treasurer of the county, Fifth, To preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required by law.

SEC. 33. It shall be the duty of such clerk to designate upon every account which shall be audited and allowed by the board, the amount so allowed; and he shall also deliver to any person who may demand it, a certified copy of any record in his office or any account on file therein, on receiving from such person twenty-five cents for every folio contained in such copy.

SEC. 34. Such clerk shall not sign or issue any county orders unless ordered by the board of commissioners authorizing the same; and every such order shall be numbered, and the date, amount and number of the same, and the name of the person to whom it is issued, shall be entered in a book to be kept by him in his office for that purpose.

SEC. 35. The said clerk of each county shall, as often as a new township shall be organized in his county, or the boundaries of any township therein shall be altered, and immediately thereafter, make out and transmit to the secretary of the Territory, a certified statement of the names and boundaries so organized, and the boundaries

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of any township, the boundaries of which shall have been altered.

SEC. 36. Such clerk shall receive a reasonable compensation for such service as he may perform as clerk of the board; when no specified fees are allowed therefor, the same to be allowed by the board and paid by the county.

ARTICLE II.

PROBATE JUDGE.

SEC. 1. There shall be elected in each county a probate judge, who shall hold his office for two years, and who shall, before he enters upon the duties of his office, execute to the Territory of Montana, a bond in the penal sum of five thousand dollars, with two or more sufficient securities, to be approved by the county treasurer and filed in his office, conditioned for the faithful performance of the duties required of him by law, and for the faithful application and payment of all moneys and effects that may come into his hands in the execution of the duties of his office.

SEC. 2. The probate judge shall keep a record of all probate business done by or before him, which record shall be open to the inspection of all persons without charge, and he shall receive such fees as are by law allowed him for probate business, and such other compensation as the board of county commissioners may determine: *Provided*, That nothing shall be paid by the county, if the fees and official compensation of such judge shall amount to five hundred dollars per annum.

ARTICLE III.

COUNTY CLERK.

SEC. 1. A county clerk shall be elected in each county of this Territory, for the term of two years, and he shall, before he enter upon the duties of his office, execute and file with the treasurer of the county a bond, with two or more sufficient sureties, in the penal sum of not less than five thousand dollars, to be fixed and approved by the treasurer, with conditions, in substance as follows, to wit:

Whereas, the above bounden ——— ——— was elected to the

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office of county clerk of ———— county, on the —— day of ————; now, therefore, if the said —— ———— shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers, and other things belonging to his said office, then the above obligation to be null and void; otherwise to remain in full force.

SEC. 2. The county clerk shall be, in and for his county, clerk of the board of commissioners, and *ex officia* county auditor.

SEC. 3. Every such clerk shall appoint a deputy, in writing under his hand, and shall file such appointment in his office, and such deputy in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk, during such absence, or until such vacancy shall be filled. Every such clerk may appoint other deputies, and his sureties shall be responsible under his official undertaking for the acts of such deputies.

SEC. 4. The county clerk shall keep his office at the county seat, shall attend the sessions of the board of county commissioners, either in person or by deputy, keep the seals, records, and papers of the board of county commissioners, and keep a record of the proceedings of said board, in a book as required by law, under the direction of said board of commissioners.

SEC. 5. If a vacancy in the office of county clerk shall occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor shall be elected according to law.

SEC. 6. The county clerk shall be *ex officio* recorder of deeds, and shall have custody of, and shall safely keep and preserve all the books, records, deeds, maps, and papers deposited, or kept in his office, and shall also record all deeds, mortgages, maps, instruments and writings, authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law.

SEC. 7. Every recorder shall keep a general index, direct, and inverted, in his office; the direct index shall be divided into seven columns, with heads to the respective columns, as follows, to wit:

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Time of Reception.	Names of Grantors.	Names of Grantees.	Nature of Instrument.	Vol. & Page where Recorded.	Description of Tract.	Remarks.

He shall make correct entries in such general index of every instrument recorded, concerning or affecting real estate, under the appropriate headings, entering the names of the "Grantors," in an alphabetical form. The general inverted index shall be divided into seven columns, as follows, to wit:

Time of Reception.	Names of Grantees.	Names of Grantors.	Nature of Instrument.	Vol. & Page where Recorded.	Description of Tract.	Remarks.

He shall make in such general index, correct entries of every instrument required by law to be entered in the general index direct, entering the names of the grantees in alphabetical order; and whenever any bond, mortgage, or other instrument has been released or discharged from record, whether by written release upon the margin of the records, or by recording a deed of release, the recorder shall immediately note in both general indexes, under the column headed "Remarks," and opposite to the appropriate entry, that such instrument has been satisfied.

SEC. 8. He shall also keep a recording book, each page of which shall be divided into five columns, as follows, to wit:

Time of Reception.	Names of Grantors.	Names of Grantees.	To whom Delivered.	Fees Received.

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Whenever any instrument has been received by him for record, he shall immediately endorse upon such instrument his certificate, noting the day, hour and minute of its reception, the volume and page where recorded, and the fees received for recording the same; and the date of record of such instrument, shall be from the date of the filing of the same. Whenever any instrument has been filed as aforesaid, the recorder shall immediately make an entry of the same in his receiving book, under the appropriate heading, with the amount paid as fees for recording the same; and after such instrument has been recorded, he shall deliver it to the person authorized to receive it, writing the name of the person to whom it was delivered in the appropriate column.

SEC. 9. He shall also keep a large well-bound book, in which shall be platted all maps of towns, villages or additions to the same, within his county, together with the description, acknowledgment, or other writing thereon. He shall keep an index to such book of plats, which index shall contain the name or names of the proprietors of said town, or village or addition. No recorder of deeds shall be bound to perform any of the duties required to be performed by this act, for which a fee is allowed, unless such fee has been paid or tendered.

SEC. 10. He shall keep an index of each volume of records kept in his office, showing on one page the grantors' names, in alphabetical order, and on the other page the names of the grantees, in alphabetical order.

SEC. 11. Copies of all papers filed in the office of the recorder of deeds, and transcript from the books of record kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases.

ARTICLE IV.

SHERIFF.

SEC. 1. A sheriff shall be elected in each county organized for judicial purposes, for the term of two years, and who shall, before he enter upon the duties of his office, execute to this Territory a bond with at least three sufficient securities, in such penal sum not less than five thousand dollars, nor more than fifty thousand dollars,

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as the judge of the probate court and county clerk shall specify and approve; said bond, when thus approved, to be filed in the office of said clerk; and no person shall be received as surety, who is not worth at least two thousand dollars, over and above his just debts: *Provided*, That no person shall be elected sheriff for more than two terms in succession.

SEC. 2. The condition of such bond shall be in substance as follows:

Whereas, the above bounden —— ———— was elected to the office of sheriff of the county of ————, on the ——— day of ————. Now the condition of this obligation is such, that if the said —— ———— shall well and faithfully perform and execute the duties of the office of sheriff of said county of ———— during his continuance in office, by virtue of said election, without fraud, deceit or oppression; and shall pay over all moneys that may come into his hands as sheriff, and shall deliver to his successor all writs, papers and other things pertaining to his office, which may be so required by law, then the above obligation shall be void; otherwise to be and remain in full force and effect.

SEC. 3. The sheriff of each county shall, as soon as may be, after entering upon the duties of his office, appoint some proper person under-sheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or if he become incapable of executing the duties of said office, another shall in like manner be appointed in his place.

SEC. 4. Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts, and those of his undersheriff, he shall be responsible; and may revoke such appointments at his pleasure; and persons may also be deputized by such sheriff or under-sheriff, in writing, to do particular acts; and the sheriff and his sureties shall be responsible on his official bond, for the default or misconduct of his under-sheriff and deputies.

SEC. 5. Every appointment of an under-sheriff, or of a deputy-sheriff, and every revocation of such appointment, shall be in writing, under the hand of the sheriff, and shall be filed in the office of the clerk of the county; but this section shall not extend to any person who may be deputized by any sheriff or under-sheriff, to do a particular act only.

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SEC. 6. The sheriff shall have charge and custody of the jails of his county, and of the prisoners in the same, and shall keep them himself or by his deputy or jailer, for whose acts he and his sureties shall be liable.

SEC. 7. The sheriff in person, or by his under-sheriff or deputy, shall serve and execute according to law, all processes, writs, precepts and orders issued or made by lawful authority, and to him directed; and shall attend upon the several courts of record held in his county.

SEC. 8. It shall be the duty of the sheriff, and under-sheriff and deputies, to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil and criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county as they may deem necessary.

SEC. 9. Whenever a new sheriff shall be elected and shall have qualified as required by law, the former sheriff shall, upon demand, deliver to him the jail and other property of the county, and all prisoners in such jail, and all writs, processes, orders and other papers belonging to such office and in his possession, or the possession of his under-sheriff or deputies, except as provided in the next succeeding section; and upon delivery thereof, such new sheriff shall execute to the former sheriff a receipt therefor.

SEC. 10. Sheriffs, under-sheriffs and deputies, may execute and return all such writs and processes as shall be in their hands at the expiration of their term of office, or at the time of their removal from office, which they shall have begun to execute by service, levy, or collection of money thereon.

SEC. 11. Any default or misconduct in the office of deputy-sheriff or jailer, after the death, resignation or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

SEC. 12. Any action for default or misconduct of any sheriff, his under sheriff, jailer, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

SEC. 13. Every paper required by law to be served on the

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sheriff may be served on him in person, or left at his office during business hours.

SEC. 14. No sheriff, under sheriff, or deputy, shall appear or advise as attorney or counsellor in any case in any court.

SEC. 15. Whenever any sheriff shall neglect to make due return of any writ or process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal — such fine, however, not to exceed two hundred dollars, — and also an action for damages to the party aggrieved.

SEC. 16. No sheriff shall directly or indirectly ask, demand, or receive for any service to be by him performed in the discharge of any of his official duties, any greater fees than are allowed by law, on pain of forfeiture of treble damages to the party aggrieved, and of being fined in a sum not less than twenty-five dollars and not more than two hundred dollars.

ARTICLE V.

CORONER.

SEC. 1. A coroner shall be elected in each county for the term of two years, who shall, before he enter upon the duties of his office, give bonds to this Territory in such penal sum, not less than five hundred dollars nor more than five thousand dollars, with sufficient sureties, not less than two in number, as the county treasurer shall direct and approve, the condition of which bond shall be in substance the same as that given by the sheriff, such bond to be filed with the clerk of the proper county.

SEC. 2. When there shall be no sheriff in the county organized for judicial purposes, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county until a sheriff be elected and qualified; and when the sheriff, from any cause, shall be committed to the jail of his county, the coroner shall be keeper thereof during the time the sheriff shall remain prisoner therein.

SEC. 3. Every coroner shall serve and execute processes of every kind, and perform all other duties of the sheriff when the

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sheriff shall be a party to a case, or when affidavit shall be made and filed as provided in the succeeding section; and in all such cases he shall exercise the powers and proceed in the same manner as prescribed for the sheriff in the performance of similar duties.

SEC. 4. Whenever any party, his agent, or attorney, shall make and file with the clerk of the proper court an affidavit stating that he believes that the sheriff of such county will not, by reason of either partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit commenced or about to be commenced in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done.

SEC. 5. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of any person supposed to have died by unlawful means, the cause of whose death is unknown, found or being in the county, it shall be his duty to summon forthwith six citizens of the county to appear before him at a time and place named.

SEC. 6. If any juror fail to appear, the coroner shall summon the proper number from by-standers immediately, and proceed to impanel them, and administer the following oath in substance:

You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you. So help you God.

SEC. 7. The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and witnesses shall be allowed the same fees as in cases before a justice of the peace; and the coroner shall have the same authority to enforce the attendance of witnesses, and to punish them and jurors for contempt in disobeying his processes, as a justice of the peace has, when his process issues in behalf of the Territory.

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WITNESS'S OATH.

SEC. 8. An oath shall be administered to the witnesses in attendance, as follows:

You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

TESTIMONY.

SEC. 9. The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witnesses.

VERDICT.

SEC. 10. The jurors having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matters in the following form suggested as far as found:

TERRITORY OF MONTANA, } ss.
County of ———. }

An inquisition holden at ———, in the county of ———, on the ——— day of ———, A. D. 18——, before me, —— ———, coroner of said county, upon the body of —— ——, (or person unknown) there lying dead, by the jurors whose names are hereunto subscribed, the said jurors, upon their oaths, do say (here state when, how, by what person, means, weapons, or accident he or she came to his or her death, and whether feloniously). In testimony whereof the said jurors have hereunto set their hands the day and year aforesaid.

SAME, SECRET.

SEC. 11. If the inquisition find a crime has been committed on the deceased, and name the person whom the jury believes has committed it, the inquest shall not be made public until after the arrest, directed in the next section.

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SEC. 12. If the person charged be present the coroner may order his arrest by an officer, or any person, and shall make a warrant requiring the officer or other person to take him before a justice of the peace.

WARRANT.

SEC. 13. If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff, or any constable of the county, requiring him to arrest the person and take him before a justice of the peace.

SEC. 14. The warrant of a coroner in the above cases shall be of equal authority with that of a justice of the peace; and when the person charged is brought before the justice of the peace, he shall be dealt with as a person held under a complaint in the usual form.

SEC. 15. The warrant of the coroner shall recite substantially the proceedings had before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice, instead of a complaint.

RETURN.

SEC. 16. The coroner shall then return to the district court the inquisition, the written evidence, and the list of the witnesses who testified material matter.

BURIAL EXPENSES.

SEC. 17. The coroner shall cause the body of a deceased person which he is called to view to be delivered to his or her friends, if there be any, if not, he shall cause him or her to be decently buried, and the expenses to be paid from any property found with the body, or if there be none, from the county treasury, by certifying an account of the expenses, which being presented to the board of county commissioners, shall be allowed by them, if deemed reasonable, and paid as other claims on the county.

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JUSTICES TO ACT AS CORONER.

SEC. 18. When there is no coroner, or in case of his absence, or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies.

SURGEON.

SEC. 19. In the above inquisition by a coroner, when he or a jury shall deem it requisite, he may summon one or more physicians or surgeons to make scientific examinations, and may allow in such cases a reasonable compensation, subject to the confirmation of the board of county commissioners.

ARTICLE VI.

COUNTY TREASURER.

SEC. 1. A county treasurer shall be elected in each county for the term of two years, and shall before entering upon the discharge of his duties execute to the board of county commissioners of his county a bond with three or more sufficient sureties, to be approved by the board, and in such penal sum as they may direct; which bond, with the approval of the board endorsed thereon by their clerk, shall be filed in the office of the county clerk; and in case the board of commissioners shall not be in session in time for any county treasurer to present his bond for their approval as above specified, or he shall be unable from any cause to present his bond at any regular meeting of the board, after due notice of his election, then it may be lawful for such treasurer to present his bond to the chairman and clerk of such board for their approval; and their approval endorsed thereon shall have the same effect as if done by the board of commissioners. And in such case, when the board shall not have fixed the penal sum of such bond, it shall not be less than double the amount of all the moneys directed by the board to be levied in the county and to be paid to the treasurer during the year.

SEC. 2. The condition of such bond shall be in substance as follows:

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Whereas, the herein bounden —— ——— was elected to the office of county treasurer of the county of ———, on the ———, day of ————, A. D. 18——. Now, therefore, the condition of this obligation is such that if the said —— ———, and his deputy, and all persons employed in his office, shall faithfully and promptly perform the duties of said office, and the said —— —— and his deputies shall pay according to law all moneys which shall come to his hands as treasurer, and will render a just and true account thereof whenever required by said board of county commissioners, or by any provision of law, and shall deliver over to his successor in office, or to any person authorized by law to receive the same, all moneys, books, papers, and other things appertaining thereto, or belonging to his office, the above obligation to be void, otherwise to be in full force.

SEC. 3. The county treasurer may appoint a deputy, who in the absence of the treasurer from his office, or in case of vacancy in said office, for any disability of the treasurer, shall perform all the duties of the office of treasurer until such vacancy be filled, or such disability be removed.

SEC. 4. In case the office of county treasurer shall become vacant, the board of county commissioners may, if in their opinion the interests of the county require it, appoint a suitable person to perform the duties of such treasurer; and the person so appointed, upon giving bond, with like sureties and condition as that required in county treasurer's bonds, and in such sum as said board shall direct, shall be invested with all the duties of such treasurer until such vacancy shall be filled, or in case of any disability, till such disability be removed.

SEC. 5. No person holding the office of sheriff, judge of probate, county attorney, county clerk, deputy county treasurer, nor any member of the board of commissioners, shall hold the office of county treasurer.

SEC. 6. It shall be the duty of each county treasurer to receive all moneys belonging to his county, from whatsoever source they may be derived, and other moneys which are by law directed to be paid to him. All moneys received by him for the use of the county shall be paid out by him only on the orders of the board of commissioners, according to law, except when specified provision for the payment thereof is or shall be otherwise made by law.

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SEC. 7. Each county treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall be open at all times for the inspection of the board of county commissioners, or any member thereof, and to all county and Territorial officers; and at the annual meeting of the said board of commissioners, or at such other time as they may direct, he shall settle with them his account as treasurer, and for that purpose he shall exhibit to them all his books and accounts, and all vouchers relative to the same, to be audited and allowed.

SEC. 8. County orders properly attested shall be entitled to preference as to payment according to the order of time in which they may be presented to the county treasurer; but when two or more orders are presented at the same time, precedence shall be given to the order of the oldest date; but every county treasurer shall receive in payment of county taxes county orders issued in his county, which may be presented in payment for such county taxes.

SEC. 9. Upon the resignation or removal from office of any county treasurer, all books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon oath of such preceding county treasurer; or in case of his death, upon oath of his executors or administrators. If any such preceding county treasurer, or in case of his death, if his executors or administrators, shall neglect or refuse to deliver up such books, papers, and moneys, on oath, when lawfully demanded, every such person shall forfeit a sum not less than one hundred dollars nor more than five hundred dollars, and be also liable upon his official bond for such refusal or neglect.

SEC. 10. The county treasurer of each county shall be, by virtue of his office, collector of taxes therein, and shall perform such duties in that regard as are prescribed by law.

SEC. 11. It shall be the duty of said county treasurer to assess at a fair value the property of any person liable to pay taxes whom the county assessor has failed to assess, and to place the same on the tax duplicate, and to collect taxes on the same in the manner provided by law. *Provided, however*, That said treasurer shall not be compelled to assess such property in person. *Provided*

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further, That he be authorized to administer oaths to such persons, or any others, touching the value of said property.

ARTICLE VII.

COUNTY SURVEYOR.—TERM—BOND.

SEC. 1. A county surveyor shall be elected for the term of two years, who shall give bond to the board of county commissioners, to be approved by the county clerk of the proper county, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties.

SEC. 2. The county surveyor may appoint as many assistants as he may think proper, for whose official acts he shall be responsible. The certificate of the county surveyor, or any of his deputies shall be admitted as legal evidence in any court of the Territory, but the same may be explained or rebutted by other evidence.

SEC. 3. It shall be the duty of the county surveyor, by himself or one of his deputies, to execute any survey which may be required by an order of any court, upon the application of any individual or corporation.

SEC. 4. The said surveyor shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided for that purpose by the county, which shall be transmitted to his successor in office. He shall also number each survey, progressively, and shall preserve a copy of field notes and calculations of each survey, indorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

SEC. 5. If the office of county surveyor be at any time vacant, the board of county commissioners are hereby empowered to appoint some suitable person to perform the duties of the office until a county surveyor be elected.

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ARTICLE VIII.

County Assessor.

Sec. 1. A county assessor shall be elected in each county, at the general election, who shall give bond with two or more sufficient sureties, in the penal sum of not less than two thousand dollars, for the performance of his duties, to the satisfaction of the board of county commissioners, and subscribe an oath or affirmation for the faithful performance of his duties as such assessor, and shall be a qualified elector of said county, and shall hold his office for one year and until his successor is elected and qualified.

Sec. 2. When the board of county commissioners shall be of the opinion that such assessor is unable to perform the duties of his office according to law, they may authorize said assessor to appoint one or more deputies, who shall be sworn and give bond, similar to the principal himself.

Sec. 3. Such successor and deputy or deputies, shall receive from said county, such a sum,—not exceeding twelve dollars per day, for each day of actual service in the discharge of said duties, —as the said board of county commissioners may deem right and just.

ARTICLE IX.

Miscellaneous Provisions.

Sec. 1. Each sheriff, county clerk, county treasurer, county attorney and probate judge, shall keep his office at the county seat of his county, and in the office provided by the county, if any such has been provided, and if there be none established, then at such place as shall be fixed by special provision of law, or if there be no such provision, then at such place as the board of county commissioners shall direct, and they shall each keep the same open during the usual business hours of each day (Sundays excepted), and all books and papers required to be in their office, shall be open for the examination of any person, and if any person or officer shall neglect to comply with the provisions of this section, he shall forfeit for each day he so neglect, the sum of five dollars.

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SEC. 2. Each county or township officer named in this and the succeeding article, shall, before entering upon the duties of his office, and within twenty days after receiving official notice of his election or appointment, or within twenty days after the commencement of the term for which he was elected, execute and deposit his official bond, as prescribed by law, and any such officer shall also, within the same time, take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same with his official bond, to be filed and preserved therewith.

SEC. 3. Every deputy, appointed to any of said offices, shall, before entering upon his duties under such appointment, take and subscribe to the like oath of office as that required to be taken by the officer appointing him, and shall deposit the same in the office where the bond of such officer is deposited.

SEC. 4. Copies of all documents, writs, proceedings, instruments, papers and writings, duly filed or deposited in the office of any judge of probate, county clerk or county treasurer, and transcript from books of record or proceedings kept by any of said officers, with the seal of his office affixed, shall be *prima facie* evidence in all cases.

SEC. 5. Whenever any justice of the peace shall be required to act as coroner in any case, or any coroner shall be required to act as sheriff, or any other officer in this Territory shall be required to perform any duties belonging to any other officer, he shall, for the time being, have the same powers in respect to those duties, as are given by law to the officer whose duties he shall perform, and shall be entitled to receive the same compensation for his services.

ARTICLE X.

JUSTICES AND CONSTABLES.

SEC. 1. That on the first Monday of April next, there shall be elected by the qualified voters of each township, which may be organized by the board of county commissioners,—two justices of the peace, one of whom shall be elected for the term of two years, and one, for one year, and it shall be so designated on the ballot; also two constables for the same time and in the same manner, and

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on the first Monday of September annually thereafter, there shall be elected by the qualified voters of each township, one justice of the peace, and one constable. The powers, jurisdiction and duties of the several justices and constables herein provided for, shall be the same as provided by law.

SEC. 2. Every justice of the peace, after he has received his certificate of election, shall, before entering upon the duties of his office, be required to execute an undertaking to the Territory of Montana, in the penal sum of two thousand dollars, with at least two sufficient sureties, who shall certify the same according to law, which said undertaking shall be approved by the county clerk, and in addition, such justice shall take and subscribe to an oath, or make affirmation to support the Constitution of the United States, and the Organic Act of this Territory, and that he will well and truly perform all the duties which may be required of him by law, and which oath or affirmation shall be indorsed upon his official undertaking, which shall be filed with the county clerk.

SEC 3 Every constable elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, be required to execute an undertaking to the Territory of Montana, in the penal sum of two thousand dollars, with two sufficient sureties, and comply with the previous section, as justices of the peace are required by law to do.

SEC. 4. That for the purpose of carrying into effect the provisions of this act, the board of county commissioners heretofore appointed or elected, or who shall hereafter be appointed or elected, shall, on the fifteenth day of March next, assemble at the county seat of their respective counties and proceed to lay off or divide their respective counties into townships and precincts, and appoint three citizens in each precinct to act as judges of election, which election shall be conducted in all things according to law.

SEC. 5. This act shall be in force from and after its passage.

[Approved February 9, 1865.]

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AN ACT concerning Licenses.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be levied and collected by the tax collector a license tax as follows: First, For each billiard table twenty dollars per quarter. Second, From the manager or lessee of every theatre five dollars per day, or fifty dollars per month. Third, For each exhibition of serenaders, opera, or concert singers, dance-houses, hurdy-gurdy houses, minstrels, sleight-of-hand performances, legerdemain, and all other shows and exhibitions, the same payment for license as is required for theatrical performances. Fourth, From each and every insurance company transacting business in this Territory the sum of fifty dollars per year. Fifth, From each pawnbroker fifty dollars per quarter. Sixth, From each keeper of an intelligence office, or assayer of metals, quartz, or rock, fifteen dollars per quarter. Seventh, Each professional man before practicing as such, all lawyers, dentists, physicians, surgeons, and persons of all other professions, shall pay a license of twenty dollars per annum.

SEC. 2. Licenses shall be obtained by the person, private association, or incorporation, doing business in this Territory, engaged in one or more of the following occupations, to wit.: In buying or selling foreign or inland bills of exchange, or in loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons, or Territorial, county or city stocks, or indebtedness or stocks of incorporated companies or unincorporated companies, or person or persons, or in buying or selling gold dust, or gold or silver bullion, gold or silver coin, keepers of savings banks, or engaged as common carriers in transmitting or carrying gold dust, gold or silver coin or bullion, from one place to another, for hire or profit, or engaged in receiving general or special deposits of gold dust, gold or silver coin or bullion, including all brokers, and shall be divided into five classes, as follows: Those doing business in the aggregate to the amount of two hundred thousand dollars per quarter shall constitute the first class,

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and shall pay a license of one hundred dollars per quarter; those doing business to the amount of one hundred and fifty thousand dollars and less than two hundred thousand dollars per quarter shall constitute the second class, and shall pay a license of eighty dollars per quarter; all those doing business to the amount of one hundred thousand dollars per quarter, and less than one hundred and fifty thousand dollars per quarter, shall constitute the third class, and shall pay a license of fifty dollars per quarter; all those doing business to the amount of fifty thousand dollars per quarter, and less than one hundred thousand dollars per quarter, shall constitute the fourth class, and shall pay a license of forty dollars per quarter; and all those doing business less than fifty thousand dollars per quarter shall constitute the fifth class, and shall pay a license of thirty dollars per quarter. Said amounts are to be paid to the collector of taxes in the county in which the party applying therefor desires to or does transact any or all of the occupations specified herein; and a separate license shall be obtained for each branch or separate house of business in the same county.

SEC. 3. All bankers, or such persons or corporations as are engaged in buying or selling foreign or domestic bills of exchange or drafts, shall be divided into five classes, as follows: Those doing business to the amount of five hundred thousand dollars per month shall constitute the first class, and shall pay a license of one hundred dollars per month; and those doing business between the sums of three and five hundred thousand dollars per month shall constitute the second class, and shall pay a license of eighty dollars per month; all those doing business between the sums of two and three hundred thousand dollars per month shall constitute the third class, and shall pay a license of sixty dollars per month; all those doing business between the sums of one and two hundred thousand dollars per month shall constitute the fourth class, and shall pay a license of forty dollars per month; and all persons doing business in any sum less than one hundred thousand dollars per month shall constitute the fifth class, and shall pay a license of thirty dollars per month.

SEC. 4. All keepers of livery stables, keepers of hay-yards or corrals for feeding or keeping stock or selling hay, shall pay a license of fifteen dollars per quarter; and all ranchmen who keep

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or herd stock for hire shall pay a license of fifteen dollars per quarter.

SEC. 5. Every person who has a fixed place of business, who may deal in goods, wares, or merchandise, wines or distilled liquors, drugs or medicines, jewelry or wares of precious metals, shall pay a license as follows: Those who are estimated to make average monthly sales of one hundred thousand dollars or more shall constitute the first class; those whose monthly sales are estimated between seventy-five and one hundred thousand dollars shall constitute the second class; those whose monthly sales are estimated between fifty and seventy-five thousand dollars shall constitute the third class; those whose monthly sales are estimated between forty and fifty thousand dollars shall constitute the fourth class; those whose monthly sales are estimated between thirty and forty thousand dollars shall constitute the fifth class; those whose monthly sales are estimated between twenty and thirty thousand dollars shall constitute the sixth class; those whose monthly sales are estimated between ten and twenty thousand dollars shall constitute the seventh class; those whose estimated monthly sales are between five and ten thousand dollars shall constitute the eighth class; all those whose estimated monthly sales are between three and five thousand dollars shall constitute the ninth class; and all those whose estimated monthly sales are less than three thousand dollars shall constitute the tenth class. The first class shall pay a license of one hundred dollars per month; the second class shall pay seventy-five dollars per month; the third class shall pay fifty dollars per month; the fourth class shall pay forty dollars per month; the fifth class shall pay thirty dollars per month; the sixth class shall pay twenty-five dollars per month; the seventh class shall pay twenty dollars per month; the eighth class shall pay fifteen dollars per month; the ninth class shall pay ten dollars per month; and the tenth class shall pay five dollars per month. *Provided*, That the sales of liquors and wines, licensed under this section, shall not be in less quantities than one gallon, and no license shall be issued for less than three months. All auctioneers shall procure a license, and shall pay therefor the sum of twenty dollars per month. *Provided*, That no license shall be required for the sale of goods on execution or sheriff's sale under attachment or order of any court. All persons coming into this Territory with droves of stock for sale shall

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pay a license of one dollar for each head of neat cattle, horses, mules, or asses, and thirty cents for each head of sheep or swine so offered for sale.

SEC. 6. All tavern and innkeepers, and persons who may dispose of any spirituous, malt, or fermented liquors in quantities less than one gallon, shall, before the transaction of any such business, obtain a license, for which they shall pay the sum of fifty dollars per quarter. *Provided*, When such tavern or innkeeper shall not carry on such business within three miles of any incorporated city or town, then the said license shall be fifteen dollars per quarter.

SEC. 7. Every travelling merchant, hawker or pedler, who shall carry a pack or trunk, and shall vend goods, wares, or merchandise, shall pay a license of five dollars per month; and every travelling merchant, hawker or pedler, or dealer in provisions not raised or produced by himself in the Territory, who shall use a wagon or cart drawn by one or more animals, shall pay a license of ten dollars per month; and any person who shall come into the Territory with one or more wagon loads of goods, wares, merchandise, or provisions not raised by himself in this Territory, and offer the same for sale, shall pay a license of ten dollars for each wagon so loaded. *Provided*, Such load of goods, wares, merchandise, or provisions does not exceed in value one thousand dollars; and if said load exceeds one thousand dollars in value, then the person offering the same shall pay one per cent. upon such excess over one thousand dollars.

SEC. 8. All keepers of houses of entertainment, boarding-houses, and innkeepers, and tavern keepers, where no intoxicating liquor shall be sold, shall pay a license of ten dollars per quarter.

SEC. 9. Every brewer, or manufacturer of malt or spirituous liquors, fermented liquors, soda water, pop beer, or drinks to be put up in bottles, shall pay a license of ten dollars per month.

SEC. 10. Every butcher shall pay a license of five dollars per quarter; and every artist, or keeper of a picture gallery, daguerreotypist, ambrotypist, or other artist, shall pay a license of five dollars per month.

SEC. 11. Every person who shall keep any gaming-table, gaming-house, roulette, wheel of fortune, dice, cards, or any games of chance, or hazard — not prohibited by any laws of this Territory —

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for amusement or profit, shall pay a license of fifty dollars per month for each house so kept.

SEC. 12. Licenses may be granted under the provisions of this act for one year or less, at the option of the applicant. *Provided*, No license shall be granted for a less time than that mentioned in the rates of assessments of licenses in this act.

SEC. 13. Each tax collector shall make diligent inquiry and examination as to all persons in his county liable to pay licenses required in this act; and it shall be his duty to require each person to state, under oath or affirmation, the amount of business which he, or the firm of which he is a member, or for which he is the agent or attorney, or the association or corporation of which he is the president or officer, have done in the last preceding month or quarter, and also to make a statement, under oath if required, in order to carry out the provisions of this act; and thereupon such agent or other person shall procure a license for such month or quarter for the class of which such party is liable to pay; and in all cases where an under-estimate has been made, the applicant shall be made to pay double license for the next month or quarter. Such license shall authorize the party obtaining the same in his county to transact business as provided in such license. *Provided, however*, That nothing in this act, nor in any license issued under it, shall be construed to authorize any person to carry on any business without procuring such additional license as may be lawfully required by the laws of the United States, or of any incorporated city.

SEC. 14. Any person or persons who shall commence, or continue to carry on or transact any business, trade, profession, or calling, for the transaction of which a license is required by this act, without a proper license as herein required, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than one hundred dollars, and the collector may commence suit in the name of the people of the United States in the Territory of Montana; and in such case either the collector or the attorney may make the affidavit, and a writ of attachment may issue without any bonds given by the plaintiffs; and in case of a recovery by the plaintiffs, the sum of twenty dollars liquidated damages shall be included in the judgment and costs, and be collected from the defendant, and five dollars thereof shall

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be paid the collector, and fifteen dollars to the prosecuting attorney prosecuting the suit.

SEC. 15. Upon the trial of any criminal action provided for by this act, the defendant shall be deemed not to have procured the proper license unless he either produce it or prove that he did procure it; but he may plead in bar of the criminal action a recovery and payment by him, in a civil action, of the proper license money, damages and costs. The money collected for licenses provided for in this and the preceding sections, shall be paid into the county treasury, sixty per cent. for the use of the county and forty per cent. for Territorial purposes.

SEC. 16 The license provided for in this act shall commence on the first day of March, one thousand eight hundred and sixty-five; and all proper orders drawn on the county treasurer or Territorial treasurer shall be receivable for said license

SEC. 17. This act shall take effect from and after its passage.

[Approved February 9, 1865.]

AN ACT defining the Boundary Lines of Counties in Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That all that portion of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county, to be known as Missoula County, to wit: commencing at a point of intersection of the parallel of latitude forty-nine degrees with the line of longitude one hundred and sixteen degrees, thence along said line of longitude south to the summit of the Bitter Root Mountains, and along the summit of the Bitter Root Mountains, in a southerly direction, to the summit of the Rocky Mountains, and along said summit of the Rocky Mountains, dividing Deer Lodge Valley from Bitter Root Valley, in a north-westerly direction, to meredian of longitude one hundred and thirteen degrees and thirty minutes to the parallel forty-nine degrees, and along said parallel of latitude to place of beginning; and the county seat of said county of Missoula is hereby located at Hell Gate.

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SEC. 2. *Be it further enacted*, That all that portion of the Territory of Montana embraced in the following boundaries be, and the same is hereby, created a county, to be known as Deer Lodge County, to wit: commencing at the point of the intersection of the parallel of latitude forty-nine degrees with the line of longitude one hundred and thirteen degrees and thirty minutes, thence along the said forty-ninth parallel to meridian of longitude one hundred and twelve degrees, and thence south along said one hundred and twelfth meridian to the Big Hole River, thence up said Big Hole River to the intersection of parallel of latitude forty-five degrees and fifty minutes with meridian of longitude one hundred and twelve degrees and fifty minutes, thence west along the line forty-five degrees and fifty minutes to the boundary line of Missoula County, thence along said boundary line north to the place of beginning; and the county seat of said Deer Lodge County is hereby located at Silver Bow.

SEC. 3. *Be it further enacted*, That all that portion of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county, to be known as Beaver Head County, to wit: commencing at a point where the one hundred and twelfth meridian of longitude intersects or crosses the Big Hole River, thence south along said meridian to the boundary of the Territory, thence along the boundary of said Territory to the southern boundary of Missoula County, thence along the boundary of Missoula County to the southern boundary of Deer Lodge County, thence along the southern boundary of Deer Lodge County to the place of beginning; and the county seat of said Beaver Head County is hereby located at Bannock City.

SEC. 4. *Be it further enacted*, That all that portion of the Territory of Montana embraced within the following boundaries be, and the same is hereby, created a county, to be known as Madison County, to wit: commencing at the point where the line of longitude one hundred and eleventh degree crosses the Rocky Mountains, thence due east to the point of the dividing ridge or range between the waters of the Madison and Gallatin Rivers, thence along said dividing range to the southern boundary of the Territory, thence along said boundary to the eastern boundary of Beaver Head County on meridian of longitude one hundred and twelve degrees, thence along said meridian of longitude north to where the

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same crosses the summit of the Rocky Mountains, thence east to the place of beginning; and the county seat of Madison County is hereby located at Virginia City.

SEC. 5. *Be it further enacted*, That all that portion of the Territory of Montana embraced within the following boundaries be, and the same is hereby, created a county, known as Jefferson County, to wit: commencing at a point where the meridian of longitude one hundred and eleventh degree intersects or crosses the northern boundary of Madison County, thence along said northern boundary of Madison County to meridian of longitude one hundred and twelve degrees, thence north along said meridian of longitude to the Bald Mountains at the head of Ten Mile Creek, thence along the dividing ridge between Prickly Pear and Ten Mile creeks to the foot of the mountains; thence east to the south side of Vermillion Bute on the Missouri River, thence up said Missouri River to meridian of longitude one hundred and eleven degrees; thence south along said meridian to the place of beginning. And the county seat of said Jefferson County is hereby located at Jefferson City.

SEC. 6. *Be it further enacted*, That all that portion of the Territory of Montana embraced in the following boundaries be, and the same is hereby, created a county, to be known as Edgerton County, to wit: commencing at the northeast corner of Jefferson County, on the Missouri River; thence down said Missouri River to the mouth of Sun River; thence up said Sun River to the eastern boundary of Deer Lodge County; thence south along said boundary of Deer Lodge County to the northern boundary line of Jefferson County; thence easterly along said boundary line to the place of beginning. And the county seat of said Edgerton County is hereby located at Silver City.

SEC. 7. *Be it further enacted*, That all that portion of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county, to be known as Gallatin County, to wit: commencing at the intersection of the one hundred and ninth meridian of longitude with the forty-seventh parallel of latitude; thence south along said meridian of longitude to the forty-fifth parallel of latitude; thence west on said parallel of latitude to the eastern boundary line of Madison County; thence northerly along said boundary line to the northeast corner of Mad-

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ison County; thence west along the northern boundary of Madison County to the eastern boundary of Jefferson County; thence northerly along said eastern boundary of Jefferson County to the Missouri River, thence down said Missouri River to the forty-seventh parallel of latitude; thence east along said parallel to the place of beginning. And the county seat of said Gallatin County is hereby located at the town of East Gallatin.

SEC. 8. *Be it further enacted*, That all that portion of the Territory of Montana embraced in the following boundaries be, and the same is hereby, created a county, to be known as Choteau County, to wit: commencing at the intersection of the one hundred and eighth meridian of longitude with the forty-ninth parallel of latitude; thence south along said meridian of longitude to the forty-seventh parallel of latitude; thence west on said parallel of latitude to the Missouri River; thence down said Missouri River to the mouth of Sun river; thence up Sun River to the one hundredth meridian of longitude; thence north along said meridian of longitude to the forty-ninth parallel of latitude; thence east along said parallel of latitude to the place of beginning. And the county seat of the said Choteau County is hereby located at Fort Benton.

SEC. 9. *Be it further enacted*, That all the remaining portion of the Territory of Montana, not included in the counties before named in this act be, and the same is hereby, created a county, to be known as Big Horn County, and shall be attached, for legislative and judicial purposes, to the County of Gallatin.

SEC. 10. The people of the several counties in this Territory may, by a vote at the first election to be held in this Territory, locate the county seat of their respective counties.

SEC. 11. This act to take effect and be in force from and after its passage.

[Approved February 2, 1865.]

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AN ACT to provide for Marks instead of Signatures.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The signature of a party when required to a written instrument, shall be equally valid if the party cannot write: *Provided*, The person make his mark, and the name of the person making the mark being written near it; and the mark being witnessed by a person who writes his own name upon such instrument as a witness.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

AN ACT to repeal an Act entitled an Act to provide a Uniform System of Territorial and County Revenue, and for the assessing and collecting the same.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the act to provide a uniform system of Territorial and county revenue, and for the assessing and collecting the same, passed by the Legislature of Idaho at its first session, and approved February the fourth A. D. 1864, and found on pages 395 and 434 inclusive, be and the same is hereby repealed.

SEC. 2. That all suits, prosecutions or indictments now pending in all courts in the Territory, for the collection of revenue under said act, are hereby dismissed at the costs of the Territory.

SEC. 3. This act to be in force from and after its passage.

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AN ACT creating certain Offices in the Territory of Montana, declaring to whom resignations shall be made, when the offices shall be deemed vacant, and the manner of filling vacancies.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That there shall be elected or appointed as hereinafter declared, the following officers, to wit: First, One Territorial treasurer. Second, One Territorial auditor, who shall be *ex officio* librarian. Third, One Territorial superintendent of public instruction. Fourth, One delegate to Congress. Fifth, Members of the council. Sixth, Members of the house of representatives. Seventh, One district attorney for each judicial district. The district attorneys shall be elected by the qualified voters of the respective districts. Such district attorneys shall hold their offices for two years, unless otherwise provided by law, or until their successors be elected and qualified, if not removed by the governor, for cause, published, and filed in the office of the secretary of the Territory. At every general election, there shall be elected in each road district, by the qualified voters thereof, one road commissioner.

SEC. 2. One delegate to congress shall be elected by the qualfied voters of the Territory. Members of the council and house of representives shall be elected by the qualified voters of their respective district.

SEC. 3. The Territorial treasurer, auditor, and superintendent of public instruction, shall be elected by the legislative assembly, upon joint ballot, who shall be commissioned by the governor, and shall hold their offices for the term of one year, and until their successors be elected and qualified.

SEC. 4. Members of the council shall hold their offices for the term of two years, unless otherwise provided by law.

SEC. 5. Members of the house of representatives and road commissioners shall hold their offices for the term of one year, unless otherwise provided by law.

SEC. 6. Notaries public may be appointed by the governor, who shall hold their offices for the term of two years unless sooner

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removed by the governor for causes published and filed in the office of the secretary.

SEC. 7. Resignations shall be made as follows: First, By Territorial officers and all officers elected by the legislature, to the governor. Second, By all county officers, to the county commissioners in their respective counties. Third, By all other officers holding their offices by appointment, to the body, board, or officers that appointed them.

SEC. 8. Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office: First, The death of the incumbent. Second, His resignation. Third, His removal. Fourth, His ceasing to be a citizen of the Territory, district, county, or precinct for which he shall have been elected or appointed, or within which the duties of his office are to be discharged. Fifth, His conviction of any infamous crime, or of any offence involving a violation of his official oath. Sixth, Refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law. Seventh, The decision of a competent tribunal declaring void his election or appointment.

SEC. 9. The governor shall also declare vacant the office of every officer required by law to execute an official bond whenever a judgment shall be obtained against such officer for a breach of the conditions of such bond.

SEC. 10. When a vacancy shall occur during the recess of the legislature, in any office which the legislature are authorized to fill by election, or which the governor, subjected to confirmation of the legislative assembly, is authorized to fill, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office until the next session of the legislature.

SEC. 11. When at any time there shall be in either of the county or precinct offices no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the governor to perform the duties of either of said offices.

SEC. 12. Every person appointed in pursuance of either of the last two preceding sections, shall, after taking the oath prescribed, and filing the requisite bond, if any be required by law, continue to exercise and perform the duties of the office to which he shall

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be appointed until such vacancy shall be regularly supplied, as prescribed by law.

SEC. 13. This act shall take effect and be in force from and after its passage and approval by the governor.

AN ACT to prescribe the Rate of Interest.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The legal rate of interest on the forbearance or loan of any money, when there is no agreement between the parties, as specified in section three of this act, shall be ten per centum per annum.

SEC. 2. Creditors shall be allowed to collect and receive interest, when there is no agreement as to the rate thereof, at the rate of ten per cent. per annum for all moneys after they become due, on any bond, bill, promissory note, or other instrument of writing, and on any judgment rendered before any court or magistrate authorized to enter up the same, within the Territory, from the day of entering up such judgment until satisfaction of the same be made; likewise on money lent, or money due on the settlement of accounts, from the day of such settlement of accounts, between the parties, and ascertaining the balance due; on money received to the use of another, and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay.

SEC. 3. The parties to any bond, bill, promissory note, or other instrument of writing, may stipulate therein the payment of a greater or higher rate of interest than ten per centum per annum, and any such stipulation contained in any such instrument of writing, may be enforced in any court of law or equity of competent jurisdiction in this Territory.

SEC. 4. This act shall take effect and be in force from and after its passage.

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PRIVATE AND SPECIAL LAWS.

AN ACT to incorporate the Missouri River and Rocky Mountain Wagon Road and Telegraph Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That W. B. Dance, N. P. Langford, S. T. Hanser, T. C. Evarts, Wm. S. Doolittle, James W. Taylor, H. L. Carver, R. Anderson, Wm. A Spencer, George L. Curran, James Foster, W. Y. Pemberton, Samuel Wood, F. B. Kerchiral, and William L. Brown, and their associates and assigns be, and are hereby, constituted a body politic and corporate, under the name and style of the Missouri River and Rocky Mountain Wagon Road and Telegraph Company.

SEC. 2. The capital stock of said company shall be eight hundred thousand ($800,000) dollars, and shall be divided into shares of not less than one hundred dollars and not exceeding five hundred dollars, each at the pleasure of said company; and said corporation shall have the power to make, and afterwards to alter, all needful rules and regulations for the government of said company, the issuing and transfer of their stock, and the management of all the company business; and shall have power to elect a president, secretary, treasurer, superintendent, and board of directors, at such times and places as said company shall appoint, to hold their offices for one year. The company may, however, if they deem it advisable, unite the two offices of secretary and treasurer in one person.

SEC. 3. That said company, by their corporate name, shall be capable of making contracts, of suing and being sued, impleading and being impleaded, in all matters whatsoever, in all courts of law and equity in this Territory, and may have and use a common seal, which may be altered at pleasure.

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SEC. 4. Said company may purchase and hold property, both real and personal, which shall be necessary for the exercise of the legitimate business and powers herein granted.

SEC. 5. That said company shall have the exclusive privilege of surveying, locating, and grading a good wagon road to run from Virginia City in Madison County in this Territory to the head of navigation on the Yellow Stone River, and thence to the mouth of the Yellow Stone River, or some other point on the Missouri River, said point to be located by said company as hereinafter provided: That said road shall be built on the nearest and most practicable route to run from Virginia City across the divide east of that place, to the crossing of the Madison River, below the canon thereof at James Forman's place; thence by the nearest and most practicable route to Bridger's crossing of the Gallatin River; thence to or near Bozeman City; thence by the nearest and most practicable route to Yellow Stone River, running by or near by Emigrant Gulch; thence on the most direct line and practicable route to the head of navigation on the Yellow Stone River; thence to a point on the Missouri River, which point shall be fixed and located by said company within twelve months after the passage of this act. That said route shall be surveyed by said company, and the termini and intermediate points fixed and located within twelve months after the passage of this act; and a report and plat of said survey shall be filed with the auditor of this Territory as soon after the survey is made as is practicable.

SEC. 6. That said company shall have the exclusive privilege of constructing said wagon road along said route within five miles on each side thereof, and shall have the exclusive privilege of erecting toll gates and collecting toll on said wagon road, the aggregate number of toll gates not to exceed one to each forty miles of said road; and shall have the exclusive privilege of erecting ferries and building toll bridges over all streams on said route when the same are necessary for the travelling public at any season of the year. But in no case shall said company build toll bridges on said route that are fordable at all seasons of the year.

SEC. 7. That said company, at each toll gate on said route, may collect toll at the following rates, and no other:

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For each wagon, with one span of horses, mules, or yoke of cattle,	$2.00
For each additional span or yoke,	1.00
Eor each man and horse,	1.00
For each head of loose stock or pack animal,	25

SEC 8. That the exclusive right and privilege is hereby granted to said incorporated company to construct and put in operation an electro telegraph line between Virginia City and the head of navigation on the Yellow Stone River; thence to continue the same to points on the Missouri River, said points to be fixed and located by said company as is in this act provided for the location of the wagon road and branch of the same herein referred to. That said company shall have the exclusive right to continue and put in operation said telegraph line from Virginia City, by way of Bannack City, to the southern boundary of this Territory, on the route to Salt Lake City.

SEC. 9. This telegraph line, when constructed, shall be bound to do the business of other lines connected therewith, but no other line shall do business over this route (except by agreement) between the points before named, or intermediate points or places, or within twenty miles of said line on either side.

SEC 10. And this line be bound to transmit all dispatches in the order in which they are received, under a penalty of one hundred dollars, to be recovered with costs of suit by the person or persons suffering damages therefrom. *Provided, however*, That an arrangement may be made with the proprietors or publishers of newspapers for the transmission of intelligence of a general character out of the regular order when intended for publication, and *Provided further*, That in case of war or insurrection preference shall be given to the dispatches of officers of the army and navy of the United States, when such dispatches relate to their official duties; and preference shall be given to sheriffs and other officials for the transmission of intelligence having for its object the capture or apprehension of criminals or fugitives from justice.

SEC. 11. The board of directors of said incorporate company shall have such powers and perform such duties as may be assigned to them by the by-laws, rules, and regulations of the company.

SEC. 12 All persons who shall wantonly or maliciously interfere with or injure said company's road, bridges, ferries, or tele-

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graph line, or appurtenances thereto belonging, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and punished by a fine of not less than fifty dollars nor more than one thousand dollars, or imprisonment not more than six months, or both such fine and imprisonment.

SEC. 13. That the privileges herein granted to said company shall be and continue irrevocable for the period of twenty years.

SEC. 14. It is further enacted, that in the event said company are unable to find a practicable route for said road to the head of navigation on the Yellow Stone River, or find that the same would not be for the public good or convenience, they are hereby authorized to survey and locate said road directly to a point of easy navigation on the Missouri River on the nearest and best route for the public good. *Provided*, They make the survey of the route selected, and file a report and plat of said survey with the auditor of the Territory, within twelve months after the passage of this act. *Provided further*, That the said corporation may build, locate, establish, and maintain a branch wagon road, diverging from the main road at any point thereon, and terminating at such point on the Missouri River as the said corporation may determine; and all the privileges granted to said corporation by this act, shall extend to and include the branch road as well and fully as the main line.

SEC. 15. That if any person or persons travelling said road and getting the benefit thereof shall refuse to pay said company the toll authorized by this act, said company may have an action against any such person so refusing, and shall recover judgment against him for double the amount of toll authorized by law, and costs of suit.

SEC. 16. This corporation shall have full power for the purpose of raising funds to make and execute, under their corporate seal, their bonds in such sums as they may deem proper, not to exceed at any time their authorized capital stock, at rates of interest not to exceed fifteen per cent. per annum, with the principal and interest of said bonds, payable at such times and places as they may designate, and may secure the payment of said bonds by mortgage of their property and franchises, to be executed by said company, and may make such bonds convertible into stock of the company; and for the purpose of raising funds from time to time the said corporation shall have power to borrow money upon their bonds, or

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upon the notes of the corporation, which bonds or notes shall not bear interest at a higher rate than fifteen per cent. per annum, and all such notes, mortgages, or bonds, and all other writings signed by the president and secretary of said corporation, shall be binding upon said corporation.

SEC. 17. It shall be lawful for any city, county, or incorporated company to loan to said corporation any moneys or securities within their control, upon such terms as may be agreed upon, and to own stock in said corporation; and said city, county, or company may appoint an agent to represent its interests in relation to such loan.

SEC. 18. This corporation shall have power to unite or consolidate with any other corporation of like character, organized by any other State or Territory of the United States.

SEC. 19. This act is hereby declared to be a public act, and as such shall be construed favorably to said corporation in all courts.

SEC. 20. All acts or parts of acts conflicting herewith are hereby repealed.

SEC. 21. This act to be in force from and after its approval by the governor.

[Approved December 27, 1864.]

AN ACT to incorporate the City of Virginia.

Be it enacted by the Legislative Assembly of the Territory of Montana:

ARTICLE I.

OF BOUNDARIES.

SEC. 1. That the inhabitants of the city of Virginia, in Madison County, and Territory of Montana, be, and are hereby constituted, a body politic and corporate, by the name and style of the city of Virginia, and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded, in all courts of law

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and equity, and may have and use a common seal and alter the same at pleasure.

SEC. 2. All that territory embraced within the following limits, to wit: beginning thirty feet in the rear of the northwest corner of the double cabin now occupied by Frank Raeger & Company, located on the west side of Alder Creek, thence in a southerly direction parallel with said Alder Creek one mile and a quarter, thence in an easterly direction one mile and a half, thence in a northerly direction one mile and a quarter, thence in a westerly direction one mile and a half, to the place of beginning.

SEC. 3. Whenever any tract of land adjoining the city of Virginia, shall be laid off into town lots, and duly recorded as may be required by law, the same shall be annexed to, and become a part of the city of Virginia.

SEC. 4. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, both real and personal or mixed, either in or beyond the city, for burial grounds, and for other purposes, for the use of the inhabitants of said city.

ARTICLE II.

OF THE CITY COUNCIL.

SEC. 1. There shall be a city council, to consist of a mayor and board of aldermen.

SEC. 2. The board of aldermen shall consist of two members from each ward, to be chosen by the qualified voters, for two years, and until others shall be legally qualified.

SEC. 3. No person shall be an alderman unless at the time of his election he shall be a freeholder, and have resided within the limits of the city six months immediately preceding his election, and shall have the requisite qualifications to vote for members of the legislature, be a resident of the ward for which he is elected, and a citizen of the United States.

SEC. 4. If any alderman, after his election, remove from the ward for which he was elected, his office shall be declared vacated.

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The mayor and aldermen shall serve without compensation from the city funds until there shall be five thousand inhabitants in said city; and when the population shall exceed five thousand, the mayor shall receive such compensation as the city council shall determine.

SEC. 5. At the first meeting of the city council the aldermen shall be divided by lot into two classes. The seats of those of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that one-half of the board shall be elected annually.

SEC. 6. The city council shall judge of the qualifications and returns of their own members, and shall determine all contested elections under this act.

SEC. 7. A majority of the city council shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance.

SEC. 8. The city council shall have power to determine the rules of its proceedings, punish its members for disorderly conduct, and with the concurrence of two-thirds of the members elected, expel any member.

SEC. 9. The city council shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays, when demanded by any member present, shall be entered upon the journal.

SEC. 10. No alderman shall be appointed to any office under the authority of the city which shall have been created, or the emoluments of which shall have been increased during the time for which he shall have been elected.

SEC. 11. All vacancies that shall occur in the board of aldermen shall be filled by election.

SEC. 12. The mayor and aldermen, before entering upon the duties of their respective offices, shall each take and subscribe an oath, or make an affirmation, that he will support the constitution of the United States, and the Organic Act of this Territory, and that he will well and truly perform the duties of his office, to the best of his skill and ability.

SEC. 13. Whenever there shall be a tie in the election of aldermen, the judges of the election shall certify the fact to the mayor,

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who shall determine the same by lot, in such manner as shall be prescribed by ordinance.

SEC. 14. There shall be twelve stated meetings of the city council in each year, at such times and places as may be prescribed by the city council.

ARTICLE III.

OF THE EXECUTIVE OFFICER.

SEC. 1. The chief executive officer shall be a mayor, who shall be elected by the qualified voters of the city, and shall hold his office for one year, and until his successor shall be elected and qualified.

SEC. 2. No person shall be eligible to the office of mayor who shall not have been a resident of the city for one year next preceding his election, or who shall be under twenty-five years of age, or who shall not at the time of his election be a citizen of the United States.

SEC. 3. If any mayor during the term for which he shall have been elected remove from the city, or shall be absent from the city for the space of three months, his office shall be vacated.

SEC. 4. When two or more persons shall have an equal number of votes for mayor, the judges of election shall certify the same to the city council, who shall proceed to determine the same by lot, in such manner as may be provided by ordinance.

SEC. 5. Whenever any election for mayor shall be contested, the city council shall determine the same as may be prescribed by ordinance.

SEC. 6. Whenever any vacancy shall happen in the office of mayor, it shall be filled by election.

ARTICLE IV.

OF ELECTIONS.

SEC. On the first Monday in February, A. D. 1865, an election shall be held in said city for one mayor, one justice of the peace, to be denominated police magistrate for the city of Virginia, one

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marshal for the city, one city attorney, one city clerk, one city treasurer, one city assessor, one street commissioner, and two aldermen for each ward, and forever thereafter on the first Monday in February of each year there shall be an election of one mayor, one city marshal, one city clerk, one city attorney, one city treasurer, one city assessor, one street commissioner, and one alderman for each ward; and on the first Monday in February in every second year there shall be an election for one police magistrate for said city.

SEC. 2. All white male inhabitants over the age of twenty-one years, who are entitled to vote for members of the Territorial legislature, and who shall have been actual residents of said city ninety days next preceding said election, shall be entitled to vote for city officers. *Provided*, That said voters shall give their votes in the wards in which they shall respectively reside.

ARTICLE V.

POWERS OF THE CITY COUNCIL.

SEC. 1. The city council shall have power and authority to levy and collect taxes, for city purposes, upon all taxable property, real, mixed and personal—except as hereinafter excepted—within the limits of the city, not exceeding one-half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same in any manner that may be prescribed by ordinance, not repugnant to the constitution of the United States, or the Organic Act of this Territory.

SEC 2. The city council shall have power to appoint all officers, except such as are elected or otherwise provided for in this act.

SEC. 3. The city council shall have power to require of all officers appointed or elected in pursuance of this act, bonds, with penalty and security, for the faithful performance of their respective duties, as may be deemed expedient; and also to require of all officers appointed or elected as aforesaid, to take such oaths or make such affirmations as the city council may prescribe for the faithful performance of the duties of their respective offices, before entering upon the discharge of the same; to establish, support, and regulate common schools, and to borrow money on the credit of the

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city. *Provided*, That no sum or sums of money shall be borrowed at a greater interest than twenty per cent. per annum, nor shall any sum or sums be borrowed as aforesaid until after the subject shall have been submitted to the legal voters of said city, for which purpose a special election shall be called by the mayor, after giving twenty days notice thereof, and if a majority of the legal voters of said city shall vote in favor of any such loan, the same may be negotiated, and not otherwise, and *provided further*, That the annual interest on the loan of the city shall never exceed one-half of the revenue annually derived from the tax levied by said city upon the real estate within the limits of said city.

SEC. 4. To appropriate money and funds for the payment of the debts and expenses of the city.

SEC. 5. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for the purpose, and to enforce the same, within five miles of the city.

SEC. 6. To establish hospitals, and make regulations for the government of the same.

SEC. 7. To make regulations to secure the general health of the inhabitants; to declare what shall be a nuisance, and to prevent and remove the same.

SEC. 8. To provide the city with water, erect hydrants and pumps, build cisterns and dig wells in the streets for the supply of engines and buckets. *Provided*, That nothing in said section shall be so construed as to deprive private individuals of vested or acquired rights without just compensation being made therefor by the city government.

SEC. 9. To open, alter, abolish, widen, extend, establish, grade, pave, or otherwise improve and keep in repair, streets, avenues, lanes, and alleys, sidewalks, drains and sewers.

SEC. 10. To establish, erect, and keep in repair, bridges.

SEC. 11. To divide the city into wards, alter the boundaries thereof, and create additional wards as the occasion may require.

SEC. 12. To establish, support, and regulate night watches.

SEC. 13. To provide for lighting the streets, and to erect lamp-posts.

SEC. 14. To erect market houses, to establish markets, and market places, and to provide for the government and regulation thereof.

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SEC. 15. To provide all needful buildings for the use of the city.

SEC. 16. To provide for the enclosing, improving, and regulating all public grounds belonging to the city.

SEC. 17. To license, tax, and regulate auctioneers, merchants, pedlers, retailers, grocers, taverns, ordinaries, hawkers, brokers, pawnbrokers, and money-changers.

SEC. 18. To license, tax, and regulate hackney-carriages, wagons, carts, and drays, and fix the rates to be charged for the carriage of persons, and for the wagonage, cartage, and drayage of property.

SEC. 19. To license and regulate porters and rates of portage.

SEC. 20. To license, tax, and regulate theatrical and other exhibitions, shows and amusements.

SEC. 21. To license, restrain, regulate, prohibit, and suppress, tippling-houses, dram-shops, gambling-houses, dance-houses, bawdy-houses, and other disorderly houses, and the selling and giving away of intoxicating or malt liquors, by any person within the city, except by persons duly licensed.

SEC. 22. To provide for the prevention and extinguishment of fires, to organize and establish fire companies, and to prohibit the erection of wooden buildings in any part of the city.

SEC 23. To regulate the building and fixing of chimneys, and to fix the flues thereof.

SEC. 24. To regulate the storage of gunpowder, tar, pitch, and rosin, and other combustible materials.

SEC. 25. To regulate parapet walls and partition fences, and restrain cattle, hogs, horses, sheep, and dogs from running at large.

SEC. 26. To establish standard weights and measures, and regulate the weights and measures to be used in the city in all cases not otherwise provided for by law, and to order all laws on the subject to be enforced, and to fix and enforce payment of fines for non-compliance with any such order.

SEC. 27. To provide for the measuring and inspection of lumber, and other building materials, and the measuring of all kinds of mechanical work.

SEC. 28. To provide for the inspection and weighing of hay, and stone coal, the measurement of charcoal, firewood, and other fuel, to be sold and used within the city.

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SEC. 29. To provide for and regulate the inspection of tobacco, and of beef, pork, flour, meal, and whiskey in barrels.

SEC. 30. To regulate the inspection of butter, lard, and other provisions.

SEC. 31. To regulate the weight and quality of bread to be used in the city.

SEC. 32. To regulate the size of bricks to be sold and used in the city.

SEC. 33. To provide for taking the enumerations of the inhabitants of said city.

SEC. 34. To regulate the election of city officers, and to provide for removing from office any person holding an office created by ordinance.

SEC. 35. To fix the compensation of city officers, and regulate fees of jurors, witnesses, and others, for services rendered under this act or any ordinance made in pursuance thereof.

SEC. 36. To regulate the police of the city, to enforce fines, forfeitures, and penalties for the breach of any ordinance, and to provide for the receiving and appropriation of such fines and forfeitures, and the enforcement of such penalties; and all money collected under or by authority of any city ordinance shall be deemed to be taken to belong to said city, and disposed of by the city council, under the ordinances of said city, for the general use and benefit of the inhabitants thereof.

SEC. 37. The city council shall have exclusive power within the city, by ordinance, to license, suppress, and restrain billiard tables and bowling alleys.

SEC. 38. The city council shall have power to make all ordinances which shall be necessary and proper, for carrying into execution the powers specified in this act, so that such ordinances be not repugnant to, nor inconsistent with, the constitution of the United States nor the Organic Act of this Territory.

SEC 39. The style of the ordinance shall be:

Be it ordained by the City Council of the City of Virginia.

SEC. 40. All ordinances of the city council shall, within ten days after they shall have been passed, be published in some newspaper in the city, or posted up in three public places in said city, and shall not be in force until they have been published as aforesaid.

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SEC. 41. All ordinances of the city council may be proven by the seal of the corporation; and when printed in book form or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

ARTICLE VI.

THE MAYOR.

SEC. 1. The mayor shall preside at all meetings of the city council, and in case of a tie, shall have the casting vote, and in no other: in case of the non-attendance of the mayor at any meeting, the board of aldermen shall appoint one of their own number as chairman, who shall preside at the meeting, but shall not thereby lose his right to vote on any question before the board.

SEC. 2. The mayor or any two aldermen may call a special meeting of the city council.

SEC. 3. The mayor shall, at all times, be vigilant and active in enforcing the laws and ordinances for the government of the city. He shall inspect the conduct of all the subordinate officers of said city, and cause negligence or positive violation of duty to be prosecuted and punished. He shall, from time to time, communicate to the aldermen such information, and recommend all such measures, as in his opinion may tend to the improvement of the finances; the police; the health, security, comfort and ornament of the city.

SEC. 4. He is hereby authorized to call on every white male inhabitant of said city over the age of eighteen years, to aid in the enforcing the laws and ordinances, and in case of riots, to call out the militia to aid him in suppressing the same, or other disorderly conduct, preventing and extinguishing of fires, for securing the peace and safety of the city, or of carrying into effect any law or ordinance; and any person who shall not obey such call, shall forfeit to said city a fine not exceeding twenty-five dollars.

SEC. 5. He shall have power whenever he shall deem it necessary, to require of any of the officers of said city, an exhibit of his books and papers.

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SEC. 6. He shall have power to execute all acts that may be required of him by any ordinance made in pursuance of this act.

SEC. 7. He shall also have such power as may be vested in him by ordinance of the city, in and over all places within five miles of the boundaries of the city, for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

SEC. 8. He shall receive for his services, outside of the city, such compensation as shall be fixed by ordinance.

SEC. 9 In case the mayor shall at any time be guilty of a palpable omission of duty, or shall wilfully and corruptly be guilty of oppression, mal-conduct, or partiality in the discharge of the duties of his office, he shall be liable to be indicted in the district court of the proper county, and on conviction he shall be fined not more than five hundred dollars; and the court shall have the power, on the recommendation of the jury, to add to the judgment of the court, that he be removed from office.

ARTICLE VII.

OF PROCEEDINGS IN SPECIAL CASES.

SEC. 1. When it shall be necessary to take private property for opening, widening, or altering any public street, lane, avenue, or alley, the corporation shall make a just compensation to the person whose property is so taken; and when the amount of such compensation cannot be agreed on, the mayor shall cause the same to be ascertained by a jury of six disinterested persons, freeholders in the city.

SEC. 2. When the owners of all the property on a street, lane, avenue, or alley proposed to be opened, widened, or altered, shall petition therefor, the city council may open, widen, or alter such street, lane, avenue, or alley, upon condition to be prescribed by ordinance; but no compensation shall in such case be made to those whose property shall be taken, their tenants or others, nor shall there be any assessment of benefit or damages that may accrue thereby to any of the petitioners.

SEC. 3. All jurors empanelled to inquire into the amount of benefit or damages which shall happen to the owners of property proposed to be taken for opening, widening, or altering any street,

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lane, avenue, or alley, shall first be sworn to that effect, and shall return to the mayor their inquest in writing, and signed by the jurors.

SEC. 4. In ascertaining the amount of compensation for property taken as aforesaid, the jury shall take into consideration the benefits as well as the injury happening by such opening, widening, or altering such street, lane, avenue, or alley.

SEC. 5. The mayor shall have power, for good cause shown, within ten days after inquest shall have been returned to him, as aforesaid, to set the same aside, and cause a new inquest to be made.

SEC. 6. The city council shall have power by ordinance to levy and collect a special tax on the holders of lots on any street, lane, avenue, or alley, according to their respective fronts, for the purpose of paving, grading, or planking sidewalks and lighting such street, lane, avenue, or alley. *Provided*, Said tax shall not exceed the actual costs of said sidewalks and lighting, respectively, which tax shall be collected in the same manner as other city taxes.

ARTICLE VIII.

MISCELLANEOUS PROVISIONS.

SEC. 1. The city council shall have the power, for the purpose of keeping the streets, lanes, avenues, and alleys in repair, to require every able-bodied male inhabitant in said city over the age of twenty-one years to labor on said streets, lanes, avenues, and alleys not exceeding one day in each and every year; and every person failing to perform such labor when duly notified by the street commissioner, shall forfeit and pay ten dollars for said day so neglected or refused.

SEC. 2. The members of the city council and firemen shall, during their term of service as such, be exempt from working out any road or street tax, and shall likewise be exempt from serving on juries and in the militia of the Territory.

SEC. 3. The city council shall have power to provide for the punishment of offenders, by imprisonment, in all cases when such offenders shall fail or refuse to pay the fines and forfeitures which may be recovered against them.

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SEC. 4. All fines and forfeitures collected for offences committed or penalties incurred within the incorporated limits of the city of Virginia shall be paid into the treasury of said city by the officer collecting the same.

SEC. 5. The city council shall cause to be published annually a full and complete statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended.

SEC. 6 All suits, actions and prosecutions, instituted, commenced or brought by the corporation hereby created, shall be prosecuted in the name of the city of Virginia.

SEC. 7. Appeals shall be allowed from decisions, in all cases arising under the provisions of this act, or any ordinance passed in pursuance thereof, to the district court; and every such appeal shall be granted in the same manner and with like effect as appeals are taken from, and granted by justices of the peace, under the laws of this Territory.

SEC. 8. Whenever the mayor shall absent himself from the city or resign, or die, or his office shall otherwise be vacated, the board of aldermen shall immediately proceed to elect one of their number president, who shall be mayor *pro. tem.* until the office shall be filled by election as herein provided.

SEC. 9. This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity within this Territory, without proof.

SEC. 10. The city marshal and the constables within said city of Virginia, shall be authorized and have power to execute anywhere within the county wherein said city may be located, all process issued by the police magistrate of said city, or other magistrate within the said city; and the said marshal shall have power to do all the acts that a constable may lawfully do, and shall receive the same fees that are allowed to constables in similar cases, and shall give bonds as constables are required by law to give.

SEC. 11. All actions brought to recover any penalty or forfeiture under this act, or any ordinance, by-law, or police regulation made in pursuance thereof, shall be brought in the corporate name; and it shall be lawful to declare generally a debt for such penalty, fine or forfeiture; stating the clause of this act, or the by-law or

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ordinance under which the penalty or forfeiture is claimed, and to give the special matter in evidence under it.

SEC. 12. In all prosecutions for any violation of any ordinance, by-law or other regulation, the first process shall be by summons, unless oath or affirmation shall be made for a warrant, as in other cases.

SEC. 13. Execution may issue immediately upon rendition of judgment, and if the defendant have no goods or chattels or real estate within the county, whereof the judgment can be collected, the officer rendering such judgment may require the defendant to be confined in jail for a term not exceeding three months; and all persons so committed shall be confined one day for each five dollars of such judgment and costs.

SEC. 14. The police magistrate shall have jurisdiction in all cases of violation of the city ordinances, and shall have the same jurisdiction in all civil and criminal proceedings, as is now or shall hereafter be conferred upon other justices of the peace of this Territory, and in all courts of this Territory said police magistrate shall be held to be a justice of the peace. But no change of venue shall be allowed from said police magistrate to any other justice of the peace, for hearing determination, in any case where proceedings shall be commenced against any person or persons for the violation of any city ordinance.

SEC. 15. The duties of all officers mentioned in this act, not herein prescribed, shall be prescribed by ordinance.

SEC. 16. That an act entitled "an act to incorporate Virginia City, in Madison County," passed at the first session of the Legislative Assembly of the Territory of Idaho, and approved January 30th, 1864, be and the same is hereby repealed.

SEC. 17. That R. M. Campbell, Julius Busch, and J. J. Hall be, and they are hereby, constituted and appointed to act as commissioners for the purpose hereinafter mentioned, and to serve in such capacity until the first board of aldermen of said city shall be elected and duly qualified. Said commissioners, or any two of them, shall, on or before the first Monday in February, A. D. 1865, proceed to lay out the territory embraced within the limits of the said city of Virginia into three wards and fix the boundaries of the same, and shall also provide for holding the first election herein appointed in the several wards of said city, shall fix the place for

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holding said election in each of said wards; shall appoint three persons to act as judges of election in each of said wards, who shall be sworn, and whose places may be filled in case they do not serve as provided by law in other elections. Said election shall be held and returns thereof be made and certified in all respects as may be provided by law in election for members of the legislature. A copy of said returns of said election shall be delivered to said commissioners, who shall canvas the same within three days from the time received, and the persons receiving the highest number of votes for the several officers to be elected under this act, and two aldermen for each of said wards, shall be declared by said commissioners, or any two of them, duly elected to said offices. If two or more persons shall at said election receive the same number of votes for either of said offices, the said commissioners shall determine the same between them by lot

SEC. 18. This act to be in force from and after its passage.

[Approved December 30, 1864.]

AN ACT to incorporate the Rams Horn Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That James H. Febes and O. C. Stanly, their associates or assigns, are hereby declared a body corporate, under the name of the Rams Horn Ditch Company, for five years from the passage of this act.

SEC. 2. Said company shall have the right to take five hundred inches more or less of the water of Rams Horn Creek at a point on said creek about one hundred yards below the Rams Horn Company's quartz mill or arastra, in Madison County, Montana Territory, and construct a ditch and flumes of sufficient capacity to carry said water from said point over the dividing ridge into Bivins Gulch, and thence to such other mining districts in Madison County as said water can be led and used to advantage. *Provided*, That at all times there shall be a sufficient amount of water left in said Rams Horn Creek to run one sluice head for mining purposes.

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SEC. 3. Said company is hereby granted the right of way for said ditch and flumes, together with sufficient space on either side to protect the same.

SEC. 4. Said company may sue or be sued in their corporate name, and shall have the right to sell water to purchasers at the following rates: For the first use of water fifty cents per inch, and all other uses not to exceed twenty-five cents per inch per day.

SEC. 5. The capital stock of said company shall not exceed five thousand dollars.

SEC. 6. This act to take effect from and after its approval by the governor.

[Approved December 31, 1864.]

AN ACT to dissolve the Bonds of Matrimony existing between Leonard A. Gridley and Marinda E. Gridley.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony existing between Leonard A. Gridley and Marinda E. Gridley, his wife, be, and the same are hereby, dissolved.

SEC. 2. This act to be in force from and after its approval by the governor.

[Approved December 31, 1864.]

AN ACT to authorize Zedekiah A. Stone and his Associates to Construct and Keep a Toll Bridge across Beaver Head River.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Zedekiah A. Stone and his associates, heirs and assigns be, and they are hereby, authorized to construct and keep a toll bridge across the Beaver Head River at or near the crossing of

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the said Beaver Head River, on the road leading from Bannack City to Virginia City.

SEC. 2. That the said Zedekiah A. Stone and his associates shall be entitled to charge and collect tolls at the following rates, viz: For every wagon drawn by a pair of horses, mules, or oxen, one dollar and fifty cents, for every additional pair of horses, mules, or oxen, fifty cents; for every single horse or mule and vehicle, one dollar; for every horse or mule and rider, twenty-five cents; for loose stock, such as horses, mules, asses, and cattle, fifteen cents per head; for sheep and swine, five cents per head.

SEC. 3. The commissioners of the county in which said bridge may be constructed are hereby authorized, after the expiration of one year from the completion of said bridge, to establish and fix the rates of toll which shall be collected from all persons travelling upon and over said bridge, with the privilege on the part of the commissioners to purchase for the county the said toll bridge, at a sum not exceeding the original cost of said bridge.

SEC. 4. The privileges herein granted shall continue for the period of four years.

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved January 4, 1865.]

AN ACT to incorporate the town of Montana in Beaver Head County, Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Samuel McLean, Samuel W. Batchelder, Edwin R. Purple, Walter C. Hopkins, William H. Miller, Thomas Pitt, George W. Stapleton, Darius Hawkins, James Tufts, and such other persons who are now, or who may hereafter be associated with them for that purpose, and their successors, are hereby incorporated a body politic and incorporate, by the name and style of the "Town of Montana," and by that name shall be capable of suing and being sued, impleading and being impleaded, defending

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and being defended, in all courts of law and equity having jurisdiction in this Territory. Said company is authorized to have and use a common seal, to alter the same at pleasure, and to make such rules and regulations, and to appoint such officers for the management of its affairs as the company may deem necessary, not inconsistent with the laws of this Territory and of the United States.

SEC. 2. The said incorporation shall have power to hold, manage, and control the tract of land already occupied and laid off into lots, blocks, and squares, as the town of Montana, in Beaver Head County, a survey and plat of which has been filed in the office of the recorder of said county. And further, to hold, manage, and control the following described tracts or parcels of land, lying and being adjacent to the above mentioned tract, to wit: Commencing at the northwest corner of the above mentioned filed survey, running westerly to Point of Rocks on the south side of Rattlesnake Creek about twelve hundred feet; thence southerly on a line parallel with the west line of said survey forty chains; thence easterly to the southeast corner of said survey; then commencing at the northeast corner of said survey, running southerly along east line of said survey forty chains; thence easterly on an extension of the south line of said survey sixty-five chains; thence northerly on a line parallel with the east line of said survey forty chains; thence westerly sixty-five chains, to point of beginning. *Provided*, That the whole amount of ground included within the limits described in this section shall not exceed six hundred and forty acres.

SEC. 3. The said incorporation shall have the exclusive privilege of supplying the inhabitants of said town of Montana with water from Rattlesnake Creek. *Provided*, That in availing themselves of this privilege they do not interfere with previously vested or acquired rights in the waters of said stream.

SEC. 4. The said incorporation shall have power to make additions to said town of Montana as they may deem proper, not intruding or infringing on the rights or prior possessions of any other occupant.

SEC. 5. This act shall take effect from and after its approval by the governor.

[Approved January 6, 1865.]

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AN ACT granting to C. R. Bissell and J. E. Bissell the right to build or construct a wagon road by the most direct route from Silver Bow to the Jefferson River, being located in Deer Lodge and Jefferson Counties, beginning at the Silver Bow Mines in Deer Lodge County and running up the south fork of the Silver Bow or Deer Lodge Creek to the summit of the Rocky Mountains, thence by the most direct route to the Jefferson River.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The exclusive right to operate and maintain a wagon road from a point that is called the Silver Bow Mines, in Deer Lodge County, and the said road to extend and intersect the Virginia City, Prickly Pear, and Fort Benton Wagon Road at or near what is called the Point of Rocks on the Jefferson River, the length of said road being about forty miles, said road and points so designated are hereby granted to C. R Bissell and J. E. Bissell, their associates and successors, for the term of five years, with the privileges and subject to the conditions of this act.

SEC. 2. So long, not to exceed five years, as the said C. R. Bissell and J. E. Bissell, their associates and successors, shall maintain, operate, and carry on a good wagon road between the above named points, they shall be authorized to collect the following rates of toll: For each wagon drawn by two horses, mules, or cattle, three dollars, and for each additional pair of horses, mules, or cattle fifty cents; for each man with a horse or mule, fifty cents; for each head of loose stock, twenty-five cents; for sheep or swine, ten cents per head. The said C. R. Bissell and J. E. Bissell, their associates and successors, shall be held and obligated to have the said road completed and in good order for transit of wagons and stock on or before the first day of August, A. D. 1865, under the penalty of all damages sustained, and the forfeiture of this charter.

SEC. 3. No section or part of this act shall be so construed as to prohibit the county commissioners from exercising the authority over said road as they are authorized to exercise over other licensed roads; and they may, after the expiration of two years, upon the written petition of fifty bona fide citizens of the counties in which said road is located, alter and fix the rates of toll.

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SEC. 4. This act shall take effect and be in force from and after its passage.

[Approved January 9, 1865.]

AN ACT to incorporate the Montana Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That for the purpose of developing the gold, silver, and other mineral resources of the country and encouraging the prospecting and mining interests of the Territory of Montana, William L. McMath, Alexander B. Davis, John W. Alley, William Y. Lovell, Wilbur F. Saunders, and A. L. Justice of the city of Virginia, William H. Miller, George Chrisman, and Benjamin S. Peabody of Bannock in said Territory, and such other persons as may hereafter become associated with them and their successors, be, and they are hereby, constituted a body corporate and politic, by the name and style of the Montana Gold and Silver Mining Company, for the term of fifteen years, and by and under such corporate name may make contracts and be contracted with, sue and be sued, plead and be impleaded, in all courts of law or equity in this Territory, and may have and use a common seal, and alter the same at pleasure.

SEC. 2. Any five of the corporators named in this act may proceed to open books for the subscription to the capital stock of said company, after giving ten days notice thereof by posting three printed or written notices of the time and place of the same in three public places in the city of Virginia, in this Territory. When an amount of stock is subscribed of ten thousand dollars they may proceed to organize under this act; and there shall be elected from the stockholders of said corporation five directors, who may serve for one year, and until their successors are elected, and from the said directors there shall be elected a president, and also there shall be elected a secretary and treasurer, but the offices of secretary and treasurer may be united in one person if deemed necessary.

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SEC. 3. The capital stock of said company shall be twenty-five thousand dollars, which may be increased from time to time to a sum not exceeding the sum of five hundred thousand dollars, to be represented by certificates, in sums of fifty dollars for each share paid in. Said stock shall be deemed personal property, and transferable by endorsement, or on the books of said company. The said company shall have power to establish an office in the city of Virginia, in this Territory, and in the city of New York, for the transaction of their business, if deemed necessary. The stockholders shall be liable only to the amount of stock severally held by them in said company.

SEC. 4. The board of directors of said corporation may pass such by-laws and regulations for their government as they may deem expedient, not inconsistent with the laws of the United States or the laws of this Territory, and may alter or amend the same at any regular meeting of the board of directors.

SEC. 5. The said Montana Gold and Silver Mining Company may prospect for, and shall have power in the name of said corporation to pre-empt lode or lead claims of whatever kind, nature, or description, not exceeding the number now limited, or which may hereafter be limited by law, which said lode or lead claims shall be joint property of the several stockholders of said corporation, with the power to acquire and hold by purchase or otherwise any lode or lead claims, real estate, and other property of whatever description, for the purpose of carrying on the business of mining, crushing, smelting, or otherwise extracting or separating the minerals of whatever sort or description from the ore, quartz, or pyrites, either by water or steam, and for the purpose of mining may make or construct railroads, drive tunnels, sink shafts, and do and perform any and all other matters and things necessary and requisite to be done for mining, either by arastras, furnaces, or quartz mills, with the necessary machinery belonging and attached thereto.

SEC. 6. The said corporation is authorized to sell, convey, or dispose of any of their property in the manner they may prescribe by the by-laws, rules, or regulations they may make for their government, a copy of said by-laws, rules, or regulations being signed by the president of said board, and certified to by the secretary of said corporation, and recorded in the office of the recorder of deeds

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of the county in which said real estate, lode or lead claim or claims, or other property may be located.

SEC. 7. This act to be in force from and after its passage.

[Approved January 9, 1865.]

AN ACT to provide for the Compensation of Henry Thompson for Services rendered the Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be, and is hereby, appropriated out of the Territorial treasury the sum of twenty-five hundred dollars, to be paid to Henry Thompson for money expended and time employed in the pursuit of G. Kelley, the murderer of R R. Dorsett and John White, on Boulder Creek, in Jefferson County.

SEC. 2. The Territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasurer for the sum named in the first section of this act, in favor of Henry Thompson, which shall be paid out of any money in the treasury not otherwise appropriated.

SEC. 3. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved January 11, 1865.]

AN ACT to incorporate the Jefferson Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Nathaniel Merriman, Philip Shenon, and others, who are or may be associated with them for that purpose, and their successors, are hereby incorporated a body politic and corporate, by the name and style of the Jefferson Town Company, and by that name shall be capable of suing and being sued, impleading and

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being impleaded, defending and being defended in all courts of law and equity in this Territory having jurisdiction in such cases. Said company is authorized to have and use a common seal, to alter the same at pleasure, and make such rules and regulations not incompatible with the laws of the United States, the Organic Act of Montana Territory, or any acts of the legislative assembly of Montana Territory, and appoint such officers for the management of its affairs as the company may deem necessary.

SEC. 2. The said corporation shall have power to hold, manage, and control one hundred and sixty acres of land now owned and occupied by said Town Company, and to sell, improve, or convey the lots, or any part of said tract, not incompatible with the laws of the United States, the Organic Act of Montana Territory, or any of the acts of the legislative assembly of the Territory of Montana.

SEC. 3. The said company shall have power to make additions to the said town tract as they may deem consistent, not intruding or infringing on the rights or prior possession of any other person or persons.

SEC. 4. This act to take effect and be in force from and after its passage.

[Approved January 11, 1865.]

AN ACT to incorporate the Hell Gate and Deer Lodge Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Christy P. Higgins, W. B. S. Higgins and John F. Higgins and their legal associates, representatives and successors are hereby constituted a body corporate and politic by the name and style of the Hell Gate and Deer Lodge Wagon Road Company, and by that name shall be capable of making contracts, of suing and being sued, impleading and being impleaded, in all matters whatsoever, in all courts of law and equity in this Territory, and may have and use a common seal, which may be altered at pleasure.

SEC. 2. The capital stock of said company or corporation shall

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be twenty-five thousand dollars, and it shall be divided into shares of five hundred dollars each.

SEC. 3. That said company or corporation shall have the power to make, and afterwards alter, all needful rules and regulations for the government of said company and the management of the road constructed by them, and elect a President, Secretary, Treasurer and Superintendent at such time and place as the said company may agree upon, and on the first Monday in April, A. D., 1865, and annually thereafter, to elect a President, Secretary, Treasurer and Superintendent from the shareholders of said company, who shall hold their offices for one year, and until their successors are elected and qualified; *Provided*, that said company may, if they deem it advisable, unite the offices of President and Superintendent in one person.

SEC. 4. All elections shall be by ballot, and each stockholder shall be entitled to one vote for each share he holds, and votes may be given by proxy.

SEC. 5. Said company are hereby authorized and empowered to make and construct a wagon road, practicable for the use and passage of wagons at all seasons of the year: Commencing at the town of Deer Lodge, in Deer Lodge County, and Territory of Montana, running north down Deer Lodge Creek, to its intersection with Little Blackfoot Creek, then down the Hell Gate River to Hell Gate Valley, through what is known as Hell Gate Canon, said road being in length, about ninety miles, and to have the exclusive right of way, for one mile, on either side of said road.

SEC. 6. The said company shall have the right to construct two Bridges, one across the Big Blackfoot River, and one across the Hell Gate River, at any place on said road through Hell Gate Canon, that said company may select.

SEC. 7. Said company shall have the right to establish and locate two Toll Gates, one at the bridge across the Big Blackfoot River, and one at some point between Flint Creek and the bridge across Hell Gate River, in Hell Gate Canon, and to collect at each said Toll Gate, the following rates of toll, to wit: For each buggy or vehicle, drawn by one horse or mule, one dollar and fifty cents; for each wagon or vehicle, drawn by two horses, mules or oxen, two dollars, and for each additional pair horses, mules or oxen, one dollar; for each head of animals packed, one dollar; for man and

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horse, or mule, one dollar; for each head of loose horses, mules or oxen, fifty cents; for each head of loose cattle, twenty-five cents; for each head of sheep, goats or hogs, ten cents; and any person or persons after such toll, at the before mentioned rates, shall have been demanded by the authorized Toll Gate keeper, who may be found travelling upon said road, and refusing to pay said toll, shall forfeit and pay the sum of twenty-five dollars for each said failure, to be recovered by an action of law, by said corporators.

SEC. 8. Said company shall have power to purchase and hold any real or personal property which may be necessary for the transaction of their business, and to sell and convey the same when deemed proper, and are authorized to maintain said road and bridges for the term of fifteen years from and after the passage of this act, and to collect toll on the same for the same length of time.

SEC. 9. The bridges and grades upon said road shall be completed for the passage of wagons and animals by the first day of November, A. D., 1865, and if said company shall deem it advisable to establish and locate only one toll gate, they are hereby authorized to collect the amount of toll that they were authorized to collect from both toll gates.

SEC. 10. Said company shall make not less than two switches or passing places for wagons on the first grade on the road above the Big Blackfoot river.

SEC. 11. That the said company shall keep the said road in good safe traveling condition in all seasons of the year, and in case that any part of said road be impassable, the said company shall not collect toll at any of the gates of said road.

SEC. 12. This act shall be in force from and after its passage and approval by the Governor.

[Approved January 9, 1865.]

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AN ACT to incorporate the Bitter Root and Kootenay Wagon Road and Ferry Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That B. S. Peabody, William H. Miller, George Chrisman and John D. Ritchie, their associates and successors, are hereby constituted and declared a body politic and incorporate, under the name and style of the Bitter Root and Kootenay Wagon Road and Ferry Company, and by that name may sue and be sued, plead and be impleaded, and have a common seal, which may be altered at pleasure.

SEC. 2. The main line of said road shall commence at Pond Orille mission, thence running along the most practicable route to Flat Head Lake, thence across the outlet of said lake to the Half Breed settlement.

SEC. 3. It shall be lawful for said corporation to acquire and hold any real estate necessary for the use of toll keepers on the line of said road, or for their ferrymen at the hereinafter mentioned ferry, and to sell and dispose of, and convey by deed, any real estate so used and occupied on said road whenever they may deem it for the interest of said incorporation.

SEC. 4. Said incorporation shall have power to make, and afterwards to alter and change, all needful rules and regulations for the government and management of said road, and may elect a President, Secretary and Treasurer, at such time and place as the said corporation may direct, and annually thereafter shall elect a President, Secretary and Treasurer, each of whom shall be a stockholder in said incorporation; *Provided*, however, that the said Secretary and Treasurer may be united in one person if deemed necessary by said company.

SEC. 5. Said corporation by their agent, shall have power and authority for the term of ten years to collect tolls as hereinafter mentioned, upon all persons travelling upon and over said road; and any person who shall pass any toll gate upon said road authorized to be erected and established by said corporation without first

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having paid toll as required by this act, shall forfeit and pay for each and every offence the sum of twenty-five dollars, to be recovered by an action of debt by said corporation, one half of said recovery to be for the use of the informant, the other half of said sum for the use of the county in which said toll gate may be situated.

SEC. 6. There may be erected upon the main line of said road for every fifty miles, a toll gate, at which toll gate there may be collected tolls at the following rates: upon each wagon or vehicle drawn by one span of horses, mules or yoke of cattle, the sum of two dollars; upon each additional span of horses, mules or cattle to each wagon, the sum of fifty cents; upon each riding horse or mule, the sum of twenty-five cents; upon all pack animals, the sum of twenty-five cents per head; upon all stock driven loose, the sum of twenty-five cents.

SEC. 7. Upon complaint being made to any justice of the peace in any county through which said road extends, that any portion of said road is not in reasonably good condition for wagons or vehicles, the said justice shall summon the gate keeper nearest the place on said road complained of, to appear before him on a certain day, not more than five days from the day of complaint, at a certain hour in the day to be by the justice fixed, and if it appear to the justice that the complaint is true, judgment shall be rendered against the said corporation as defendant for the costs of proceedings and thereupon no tolls shall be collected by said gate keeper until the said road shall be put in good repair for the passage of wagons; and if such gate keeper shall demand and collect such tolls before the said road shall be repaired and made passable for wagons, he shall forfeit and pay the sum of twenty-five dollars, to be recovered by action of debt for the use of the informant before any justice of the peace of the county in which said gate keeper shall reside; *Provided, however*, that if by reason of snow or high water it shall not be possible for any person at reasonable expense to repair said road, a reasonable time shall be allowed for repairing the same before any judgment shall be rendered against said corporation.

SEC. 8. The said incorporation shall further have the exclusive privilege for the term of ten years to construct and maintain a ferry across the waters of Flat Head Lake or river at any point within fifteen miles above and below the outlet of said Flat Head Lake, and shall have the privilege of collecting ferriage at the following

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rates: upon each wagon or vehicle drawn by one span of horses, yoke of cattle or mules, the sum of eight dollars; each additional span of horses, mules or cattle, the sum of one dollar; upon each pack animal, per head, the sum of one dollar; upon each riding horse, the sum of one dollar; upon all loose stock, the sum, per head, of seventy-five cents.

SEC. 9. This act shall take effect and be in force from and after its passage.

[Approved January 12, 1865.]

AN ACT granting to Franklin Ruff, James Hiestler and Antoine Primeau, a Ferry or Bridge across the Jefferson River on the road from Virginia City to Fort Benton and Prickly Pear.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The exclusive right to maintain and operate a ferry or bridge across the waters of the Jefferson river at a point about one and a half miles above what is known as the Point of Rocks, below the crossing of the Virginia City and Fort Benton wagon road, and for a distance of eight miles above said point of rocks, is hereby granted to Franklin Ruff, James Hiestler and Antoine Primeau, their associates and successors, for the term of five years, with the privileges and subject to the conditions of this act.

SEC. 2. So long, not to exceed five years, as the said Franklin Ruff, James Hiestler and Antoine Primeau, their associates and successors, shall maintain, operate and carry on a good, safe and sufficient ferry, or maintain a good, safe and sufficient bridge, within the above named distance, they shall be authorized to collect the following rates of toll, viz: For each loaded two horse, ox or mule wagon, four dollars; for each loaded wagon drawn by more than two horses, oxen or mules, five dollars; for each empty wagon, drawn by two horses, oxen or mules, two dollars; for each empty wagon drawn by more than two horses, oxen or mules, two dollars and fifty cents; for each head of loose horses, mules or cattle fifty cents each; for each man and horse with saddle one dollar; for each foot passenger, twenty-five cents; for each head of sheep or swine ten cents.

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SEC. 3. Said Franklin Ruff, James Hiestler, and Antoine Primeau, their associates and successors, shall be held and obligated from the fifteenth day of April of each year, until such time as the said river can be forded with ease and safety, to keep said ferry or bridge in good, safe and sufficient order and condition for use by night and day; and so long as no bridge shall be constructed, they shall keep a competent ferryman, who shall transport travellers, wagons and stock across said river promptly by night and day, under penalty of all damages sustained, and the forfeiture of this charter.

SEC. 4. No section or part of this act shall be so construed as to prohibit the county commissioners from exercising the same authority over said ferry or bridge as they are authorized to exercise over other licensed ferries or bridges; and they may after the expiration of two years, upon the written petition of fifty bona fide citizens of the county in which said ferry or bridge is located, alter and fix the rates of toll at the expiration of two years of the passage of this act.

SEC. 5. This act shall take effect from and after its approval by the governor.

[Approved January 13, 1865.]

AN ACT to incorporate the Valparaiso Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Nathaniel Merriman, Lewis Merriman, Elias Merriman, Allen T. Axe and Albert Young, their associates, successors and assigns, be and they are hereby constituted a body corporate and politic, to continue for the term of ten years by the name and style of the Valparaiso Gold and Silver Mining Company; and by that name and style shall be capable of making contracts, of suing and being sued, impleadiug and being impleaded in all matters whatever, in all courts of law and equity in this territory; and may have and use a common seal, which may be altered at pleasure; and that they may be capable in law of acquiring and

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conveying property, personal, real and mixed; and shall have and hold peaceable possession of the claim or claims in Jefferson county, now in their possession, and of all others which they may hereafter acquire, either by pre-emption or purchase, subject to the laws of the United States and of this territory.

SEC. 2. This corporation shall have power to make contracts of all kinds, and to establish by-laws, rules and regulations for the government of the corporation, not incompatible with the constitution of the United States, and the laws of this territory.

SEC. 3. The said company shall own and be entitled to all the quartz and ores which they may discover, excavate or purchase, so as not to interfere with any prior rights to any lode or claim previously owned or possessed by any other person, persons or company.

SEC. 4. The capital stock of said company shall be fixed by the by-laws of said company, and divided into shares as they may provide. They may elect and appoint such officers and agents as they may choose. They may borrow money and issue bonds of the company therefor, but in no case shall they incur any debt to an amount more than twenty per cent. of the capital stock, without a previous vote of two-thirds, in interest of the entire company: *Provided always*, that the said capital stock of the company shall at no time exceed the sum of one hundred thousand dollars.

SEC. 5. Any person or persons wilfully, maliciously or wantonly destroying any property belonging to the company, or obstructing work on any of the claims of said company, shall forfeit and pay treble the value of the damages or losses thereby sustained by said company, to be ascertained by any court having jurisdiction; and shall be guilty of a misdemeanor and punished accordingly.

SEC. 6. This corporation shall continue in existence ten years, and no longer. Nothing in this act contained shall be so held or construed as to vest in the said corporation any rights or privileges now possessed by any person or persons, citizens of this territory, under the laws of the territory, which are now or may hereafter be in force.

SEC. This act to take effect and be in force from and after its passage.

[Approved January 17, 1865.]

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AN ACT to incorporate the Rocky Mountain Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. For the purpose of developing the gold, silver, and other resources of the country, and encouraging the mining interests in Montana Territory, Sidney Edgerton, Amos W. Hall, Leonard A. Gridley and F. M. Thompson of Bannack City, H. M. Thompson, Josiah Fogg and S. Rich of St. Louis, and Frank J. Pratt of New York City, and such other persons as may hereafter become associated with them, be and are hereby constituted a body politic and corporate, under the name and style of the Rocky Mountain Gold and Silver Mining Company, and by and under such corporate name and capacity may sue and be sued, plead and be impleaded in any of the courts of law and equity in this Territory.

SEC. 2. Said corporation may have and use a common seal, and alter the same at pleasure, and shall be capable of holding, using and conveying any estate, real or personal, necessary for the use of said company.

SEC. 3. The capital stock of said company or corporation, shall be two hundred and fifty thousand dollars, with the privilege of increasing it, at any time the directors shall see fit, to five hundred thousand dollars, and at any time when said company shall have expended one hundred thousand dollars in working mines in this Territory or in erecting mills, furnaces, or other fixtures for working said mines, the directors of said company shall have power to increase the capital stock to one million dollars, and said stock shall be divided into shares of one hundred dollars each.

SEC. 4. The stock, property, estate and concerns of said company shall be managed by five directors. Said directors shall hold their office for the term of one year, and until their successors are elected, of whom three shall be a quorum for transacting business: *Provided, however*, no failure to elect officers shall dissolve the corporation, but the acting directors shall continue in office until the next annual election.

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SEC. 5. All elections shall be by ballot, each share shall be entitled to one vote, and votes may be given in person or by proxy.

SEC. 6. The first election for directors shall be held under the direction of said incorporators, or any three of them.

SEC. 7. The directors chosen under this act shall immediately elect out of the persons named in the act of incorporation a president, secretary, and treasurer, and if any vacancy occur, either of president or any of the officers or directors, the remaining directors shall appoint from amongst the stockholders suitable persons to fill such vacancy for the remainder of the term for which such directors were elected.

SEC. 8. For the purpose of carrying out the provisions of this act, this corporation may make or erect dams on Bald Mountain Creek, Rattlesnake and Wisconsin Gulches, provided said corporation do not interfere with the rights of previous occupants, or franchise previously obtained by other parties, and also to construct railroads, drive tunnels, sink shafts necessary for mining purposes, and erect mills, furnaces, and all other necessary buildings, stables, &c.

SEC. 9. This company shall have power to establish offices in Bannack City, St. Louis, Mo., and New York city, for the transaction of their business if necessary.

SEC. 10. The board of directors, or a quorum thereof, shall have power to form such by-laws and ordinances as shall from time to time seem to them to be needful and proper, and to alter and amend the same at their pleasure, in accordance with the constitution of the United States and laws of this Territory.

SEC. 11. The governor and legislative assembly of this Territory reserve the power to modify and amend this charter at any time, should any of its provisions be violated by such company or corporation.

SEC. 12. This act shall take effect and be in force from and after its passage.

[Approved January 17, 1865.]

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AN ACT to incorporate the Junction City Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Charles S. Bagg, John S. Lott, A. B. Davis, Alexander E. Mayhew, and others who are or may be associated with them for that purpose, and their successors, are hereby incorporated a body politic and corporate, by the name and style of the Junction City Town Company, and by that name shall be capable of suing and being sued, impleading and being impleaded, defending and being defended, in all courts of law and equity in this Territory having jurisdiction in such cases. Said company is authorized to have and to use a common seal, to alter the same at pleasure, and make such rules and regulations, not incompatible with the laws of the United States, the Organic Act of Montana Territory, or any acts of the legislative assembly of this Territory, and appoint such officers for the management of its affairs as the company may deem necessary.

SEC. 2. That the said corporation shall have power to hold, manage, and control the lands of Junction City as platted and recorded in the recorder's office at Virginia, of Madison County, by the said corporators, Charles S. Bagg, John S. Lott, A. B. Davis, and others, now owned and occupied by them as said Junction City, to convey lots or any property or part of said tract, as they may see fit and proper.

SEC. 3. They shall have power to make additions to the said town tract mentioned as they may deem consistent, not infringing on the rights of any other person or persons.

SEC. 4. This act to take effect and be in force from and after its passage and approval by the governor.

[Approved January 17, 1865.]

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AN ACT to incorporate the Consolidated Mining Company of Montana, and to Develop the Mineral Resources of the Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That A. J. Davis, William M. Stafford, Andrew Leach, Robert B. Parrott, Nathan Stein, Edward B. Nealley, James Gibson, Wilbur F. Saunders, Francis Bell, George F. Wright, and their associates, successors, heirs and assigns, are hereby created and constituted a body politic and corporate, under the name and style of the Consolidated Mining Company of Montana, for the term of twenty years, and by that name shall be competent to make contracts, sue and be sued, plead and be impleaded, contract debts, hold credits, issue and dispose of certificates of stock, purchase, pre-empt, own, use, work, and dispose of mining claims, mill sites, water privileges, and other property necessary for the purpose of said incorporation, and to have a corporate seal and device, with power to alter the same at pleasure.

SEC. 2. The capital stock of the company shall be one million dollars, which the company may increase to ten million dollars, to be divided into shares of one hundred dollars each.

SEC. 3. The officers of the company shall be a president, secretary, treasurer, and board of directors, who shall be elected on the third Monday of January, A. D. 1865, and annually thereafter, and shall hold their respective offices until their successors are elected and qualified. *Provided*, That the company shall have power to fill any vacancy occurring by death or otherwise.

SEC. 4. The company shall have power to make and adopt rules and regulations for its government and the transaction of its business, and prescribe the powers and duties of its officers, not in conflict with the constitution and by-laws of the United States or the Organic Act of this Territory. *Provided*, That the certificates of stock of the company, or the private property or certificates of stock of any member of the company shall not be liable for any tax or assessment levied by the company.

SEC. 5. The company shall have power to require of any of

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its officers before entering upon their respective duties an oath and bond for the faithful performance of the duties required of them by the by-laws, rules, and regulations of the company.

SEC. 6. The following persons shall be the officers of the company until the third Monday of January, A. D. 1865, and until their successors are elected, to wit: Andrew Leach, president; Edward B. Nealley, secretary; Nathan Stein, Treasurer; A. J. Davis, R. B. Parrot, James Gibson, directors.

SEC. 7. The principal place of business of the company shall be in Virginia City in this Territory, and the company may establish such other place or places of business as may be deemed necessary, and the first meeting of the company shall be held at Virginia City at such time as the president may direct, of which each member shall have notice, and at which meeting books may be opened for the subscription of stock.

SEC. 8. This act shall be in force from and after its passage.

[Approved January 17, 1865.]

AN ACT to provide for the compensation of David D. Chamberlain for services rendered and money expended in procuring the laws of Idaho Territory for the use and benefit of the legislature of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be, and is hereby, appropriated out of the Territorial treasury the sum of three hundred dollars, to be paid to David D. Chamberlain for the laws and bound statutes of Idaho Territory, for the use and benefit of the legislature of Montana Territory.

SEC. 2. The Territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasurer for the sum named in the first section of this act, in favor of David D. Chamberlain, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved January 17, 1865.]

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AN ACT to incorporate the Little Prickly Pear Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Malcolm Clark and E. Lewis, their legal associates and successors, are hereby constituted and declared a body politic and corporate, under the name and style of the Little Prickly Pear Wagon Road Company, and by that name may sue and be sued, plead and be impleaded, and may have a common seal, which may be altered at pleasure.

SEC. 2. The line of said road shall commence at the Little Prickly Pear, running thence down said stream, avoiding the hills, on what is known as the "Mullen road," through Medicine Rock Canon, and through canon below Lyon's Hill on the said "Mullen road."

SEC. 3. It shall be lawful for said corporation to acquire and hold all real estate necessary for the use of toll keepers, on the line of said road, and for no other purpose whatsoever, and to sell, dispose of and convey by deed, any real estate so used and occupied for the use of toll keepers on said road, whenever they shall deem it for the interest of said company to do so.

SEC. 4. Said corporation shall have power to make and afterwards to alter and change all needful rules and regulations for the government and management of said road; and shall elect a president, secretary and treasurer, at such time and place as the said corporation may agree upon; and annually thereafter to elect a president, secretary and treasurer, who shall be shareholders in said company. *Provided however*, that the said secretary and treasurer may be united in one person, if deemed advisable by said corporation.

SEC. 5. Said corporation, by their agents, shall have power and authority for a term of ten years to collect toll, as hereinafter mentioned, from all persons travelling upon and over said road with wagons or vehicles of any sort, with horses, mules, asses, or with cattle, sheep or swine; and any person who shall pass any toll gate upon said road authorized to be erected and established by said cor-

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poration, without first having paid toll, as required by this act, shall forfeit and pay for each and every offence the sum of twenty-five dollars, to be recovered by an action of debt by said corporation.

SEC. 6. In all recoveries had by said corporation, as provided in the last preceding section, one half of the sum so recovered shall be for the use of the informant, and the other half for the use of the county in which said toll gate may be situated; and it shall not be necessary to be stated, in the demand of the plaintiff, that the sum sued for as provided in the last preceding section, shall be stated for the use of the informant and said county, nor shall the interest of the informant in the recovery of the said one half of said sum, preclude him from testifying in the case, nor shall it preclude any citizen of the territory from so testifying on the part of the plaintiff.

SEC. 7. There may be erected upon said road toll gates to the amount of two, and no more, at which gates respectively there may be collected, upon all wagons, vehicles, horses, mules, asses, cattle, sheep and swine, passing over said road, the following tolls and no more, viz: Upon each wagon or vehicle drawn by one span of horses, mules, or yoke of cattle, the sum of one dollar and fifty cents; upon each additional span of horses, mules or cattle, the sum of twenty-five cents; upon each riding horse or mule the sum of fifteen cents; upon horses, mules, asses and cattle driven loose, the sum per head of twenty-five cents; upon pack animals, per head, the sum of fifteen cents; upon all sheep and swine driven over said road, the sum per head of three cents.

SEC. 8. Upon complaint being made to any justice of the peace in any county through which said road extends, that any portion of said road is not in reasonably good condition for the passage of wagons or vehicles, the said justice shall summon the gate keeper nearest the place on said road complained of, to appear before him on a day certain, not more than five days from the day of complaint, at a certain hour of the day to be by the justice fixed, and if it shall appear to the justice that the complaint is true, judgment shall be rendered against the said corporation, as defendant, for the costs of the proceedings, and thereupon no tolls shall be collected by said gate keeper, so summoned, until the said road shall be put in good repair for the passage of wagons and vehicles.

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SEC. 9. If any gate keeper shall demand and collect any tolls before the said road shall be repaired and made passable as provided in the section above recited, he shall forfeit and pay the sum of twenty-five dollars, which may be sued for by any person, in an action of debt, for the use of the informant, before any justice of the county in which said gate keeper may reside: *Provided however*, that if by reason of high water or snow, it shall be impossible for any person with reasonable expense to repair said road, a reasonable time shall be allowed for repairing the same, before any judgment for costs shall be rendered against said corporation, or said gate keeper shall be restrained from collecting tolls, as provided in section eight of this act.

SEC. 10. This act shall take effect and be in force from and after its passage.

[Approved January 19, 1865.]

AN ACT to incorporate the Big Horn Town Association.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That S. T. Hauser, H. A. Bell, J. N. York, John Vanderbilt, Drew Underwood, James Hauxhurst, A. S. Blake, their legal associates and successors, be and they are hereby created a body politic and corporate, by the name and style of the Big Horn Town Association, and by that name and style are hereby invested with power and authority to hold, possess, occupy and enjoy for the purpose of a town, the premises situated in Big Horn county and described and bounded as follows: Commencing at a dead cottonwood tree, or stump, three thousand one hundred feet below the junction of the Yellow Stone and Big Horn rivers, thence at right angles to the Yellow Stone river two thousand six hundred and forty feet, thence parallel with said river three thousand one hundred feet to a cottonwood tree, thence south ten degrees west three thousand three hundred feet to northeast banks of the Big Horn river, thence down Big Horn river to its junction with the Yellow Stone river, thence down the Yellow Stone river to place of

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beginning, embracing an area of three hundred and twenty acres, more or less.

SEC. 2. That said Big Horn Town Association shall be capable of suing and being sued, impleading and being impleaded, in all courts of law and equity in this territory having jurisdiction in such cases.

SEC. 3. Said association is authorized to have and use a common seal, to alter the same at pleasure and make such rules and regulations and appoint such officers for the management of its affairs as the association may deem necessary.

SEC. 4. The said association may sell, convey, pledge, mortgage or dispose of any real estate, personal or mixed property, possessed by purchase or otherwise, and shall have power to make additions to the present town tract as they may deem advisable, not infringing on the rights or prior possessions of any other occupant.

SEC. 5. This act to be in force from and after its passage.

[Approved January 19, 1865.]

AN ACT incorporating the Brandon Town Company in Madison County, Montana Territory, and authorizing the incorporators to lay off the town of Brandon.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Manlius Branham, Samuel Wood, James G. Spratt, W. J. McCormick, Wesley Jones, George B. Parker and C. C. Branham and their associates and successors, are hereby made a body politic and corporate, under the name and style of the Brandon Town Company, and by that name and style shall have succession to sue and be sued, plead and be impleaded, and to have and use a seal, and to break and alter the same at pleasure, and shall have power to purchase by contract or preempt any quantity of land not exceeding six hundred and forty acres on which the now town of Brandon is located or adjacent thereto, and shall have full power to survey and lay the same off into streets, alleys, lots and blocks, and to convey, lease, donate or otherwise dispose of said lots and blocks or any part thereof, and in their corporate name and

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capacity, may make, execute and deliver to all purchasers, donees or grantees of any lots or blocks or parts thereof in said town all necessary and proper deeds or conveyances to the same.

SEC. 2. That for the purpose of laying off and locating the town of Brandon, in said county and Territory, said corporators shall have the exclusive right in their corporate capacity to take possession of and occupy the lands lying within the following boundaries, to wit: commencing at a stake on the lower or west side of the upper road leading from Virginia City in said county, to Grannell's Mill or mill creek, where said road crosses said creek; thence running north forty rods; thence west one hundred and sixty rods; thence south three hundred and twenty rods; thence east one hundred and sixty rods; thence north two hundred and eighty rods to the place of beginning, containing three hundred and twenty acres more or less, it being the same lands conveyed to said corporators by J. Henry Smith and William McKenney on the 6th and 8th of September, A. D. 1864.

SEC. 3. Said corporators shall also have the power to acquire by purchase or location any quantity of land adjacent to that above described, so as not to exceed in the aggregate more than six hundred and forty acres, and shall have power to lay the same off into streets and alleys, lots and blocks, and shall have full power to sell, lease, give away or donate or otherwise dispose of their possessory right thereto, and to convey the same by such deed or written instrument as may be lawful and necessary and as against all persons or bodies, (the United States of America excepted,) who shall trespass upon said town site or shall locate or occupy any street, alley, lot or block or any fraction or part of the same without the permission of said owners or corporators; they shall have full power and authority to institute suits and other legal proceedings in any court of competent jurisdiction to eject all such trespassers therefrom, nor shall it be lawful for any person not having prior right or title to said lands or any lot or block therein to settle upon or occupy the same or any part thereof without first having the consent of said corporators.

SEC. 4. The said corporators and their successors, shall as soon as practicable after the passage of this act, proceed to lay off said town site into lots, blocks, streets and alleys, and shall make and file in the recorder office of the pro percounty, a plat of the same,

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on which shall be marked out and defined the boundaries of said town site incorporated under the provisions of this act, which said plat when so filed, shall impart notice to all persons of the extent, location and boundaries of said town site and of the lots, blocks, streets and alleys therein, and for all such purposes shall be evidence in all courts of law in this Territory.

SEC. 5. The said corporators and their successors, before entering upon the duties of their office, shall take an oath to support the Constitution of the United States and the Organic Act of this Territory, and faithfully to demean themselves in office; they shall have power to employ all agents and attorneys and other necessary officers in the execution of the trust imposed upon them. They shall organize within a reasonable time after the passage of this act, and shall elect from amongst their members, a president, secretary and treasurer; they shall have power to adopt by-laws and all necessary rules and regulations for the government of this body, and to prescribe the duties of their officers and agents, and shall keep a record of their proceedings; their records shall at all times be open to the inspection of all persons interested therein, and any three of said corporators shall constitute a quorum to transact business and shall have power to appoint proxies from amongst their members.

SEC. 6. This act to take effect from and after its passage.

[Approved January 20, 1865.]

AN ACT to incorporate the Virginia City Gas Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That George B. Parker, S. M. Hauser, James G. Spratt, W. J. McCormick, together with all other persons who shall become associated with them, by subscribing to the capital stock of said company, and their successors, be and they are hereby constituted and declared a body politic and corporate, by the name and style of the Virginia City Gas Company, for the purpose of manufacturing gas, supplying and lighting the streets and buildings

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of said city with gas. Said company is hereby authorized and empowered to have and to hold by purchase or donation, and to possess and enjoy lands, lots, goods, chattels, rents and effects of any and every kind, necessary in and about the erection, of all necessary buildings, gas works, and machinery for the manufactory of the same, and for carrying into effect the object of said corporation; and they shall have power to construct all necessary gas-pipes to conduct gas to or through any part of the city from their said gas works, and to lay the same along or through any street or alley of said city. *Provided* they be so constructed as not to impede the public travel or convenience on the same or to injure the health; *Provided, further*, that nothing in this act shall be so construed as to allow said corporation to extend the same through or over private property without compensating the owner for all damages occasioned thereby. And said corporation shall have power to use all of said property, to alien, sell and dispose of all gas by them so manufactured, and at any time to sell and convey any property that they may have or procure in their corporate capacity; and also to sue and be sued in any court having competent jurisdiction; to have and use a common seal, and the same to alter at pleasure; to ordain and establish such rules, regulations and by-laws as may be necessary for the well being of said corporation, not inconsistent with the Constitution and laws of the United States or the laws of this Territory.

SEC. 2. The capital stock of said company shall consist of ten thousand dollars, divided into shares of hundred dollars each, and shall be transferable in shares, as the regulations of said corporation shall prescribe. *Provided* that no stockholder shall transfer his stock without the consent of the directors, after an instalment is directed to be paid in, until said stockholder shall have paid the amount of the assessment thereon.

SEC. 3. The said corporation shall have the power to increase the capital stock of this company to an amount not to exceed two hundred thousand dollars, and the persons herein named in the first section of this act, or a majority of them, shall do and perform all acts necessary to organize said company. There shall be commissioners to receive subscription, and they shall have power to cause books to be opened at any time or in any place they may think proper to receive subscription to the capital stock of said company.

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SEC. 4. That when one thousand dollars shall have been subscribed, the commissioners shall call a meeting of the stockholders, by causing notice of the time and place thereof to be posted up in at least five of the most public places in Madison County, not less than ten days before the day of said meeting; and at such time and place shall proceed to elect directors who shall serve for one year, and until their successors are chosen and qualified; and shall adopt such regulations and by-laws, for the government of the corporation as they may deem expedient; the stockholders to vote either in person or by proxy, each stockholder being entitled to one vote for each share.

SEC. 5. The affairs of said company shall be governed by three directors, or a majority of them, who shall be elected by the stockholders on the first Monday of January, in each year, and each director shall be a stockholder at the time of his election, and shall cease to be a director when he shall cease to be a stockholder, and all vacancies shall be filled by election as prescribed in the previous section.

SEC. 6. The directors shall annually establish and fix the rates of charges for all gas used or to be consumed the succeeding year.

SEC. 7. Said company shall have power to contract debts to the amount of stock actually subscribed by responsible stockholders, and payable within twelve months from the time of contracting said debts and liabilities.

SEC. 8. Said company is hereby granted, for the period of twenty years, the exclusive right and privilege of manufacturing and selling gas in said city, in said county.

SEC. 9. The directors, before entering upon their duties, shall take an oath or affirmation faithfully to discharge their duties as directors aforesaid. They may from among their number elect a president, secretary and treasurer; and also adopt by-laws to prescribe their duties and powers. They may also promote such officers and agents as they may think proper, to promote such undertaking. They shall also have the power to levy assessments to be paid upon subscriptions, and have a general charge and superintending control over said company and its affairs.

SEC. 10. This act shall take effect and be in force from and after its passage.

[Approved January 20, 1865.]

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AN ACT to incorporate the Bozeman City and Fort Laramie Wagon Road and Telegraph Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Walter B. Dance and R. Anderson, and their associates and assigns be, and they are hereby, constituted a body politic and corporate, under the name and style of the Bozeman City and Fort Laramie Wagon Road and Telegraph Company.

SEC. 2. The capital stock of said corporation shall be two hundred thousand dollars, and shall be divided into shares of one hundred dollars each, which shall be transferable only on the books of the company in person or by attorney.

SEC. 3. The said corporation shall be capable, in their corporate capacity, of suing and being sued, impleading and being impleaded, in all courts of law and equity in this Territory; may have and use a common seal, and alter the same at pleasure; may ordain by-laws for their government, and alter and repeal the same; may elect a president, secretary, treasurer, and board of directors; may buy and sell, or hold property, both real and personal, and do all other things necessary to carry out the provisions of this act.

SEC. 4. The said corporation shall have power to locate and maintain a toll wagon road from Bozeman City to the crossing of the Big Horn River, north of the lower canon, thence along or near the route surveyed by Major Maynadier, and known as the Maynadier Route to the southern boundary of the Territory.

SEC. 5. Said corporation shall have the exclusive right of way for ten miles on either side of said route, and may establish toll gates at such points thereon as they may deem proper, not to exceed in the aggregate one to each forty miles of the road; and at such toll gates there may be collected tolls at rates not exceeding in the aggregate the following for every forty miles of said road, to wit: For each span of mules, horses, or oxen two dollars; for each additional span or yoke, one dollar; for each pack animal, one dollar; for each horse and rider, one dollar; for each head of loose stock, twenty-five cents.

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SEC. 6. Said company shall have power to establish ferries or build toll bridges across all streams along the line of said road which are not fordable at all seasons of the year, and no ferries or bridges shall be established within ten miles of the ferries or bridges of said corporation in any direction; and any person who shall wantonly or maliciously injure or destroy any of said companies ferries or bridges, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, in the discretion of the magistrate before whom the conviction may be had.

SEC. 7. The said corporation shall have power to locate and establish town sites at such points on the line of said route as they may determine, and for this purpose they may pre-empt and take up and hold at each point so located three hundred and twenty acres of land, which they may lay off into streets, lots, and blocks, and may hold or dispose of the same as they may see fit. *Provided*, That nothing herein contained shall interfere with the rights of prior occupants of claimants of the land so taken up.

SEC. 8. The said corporation shall have power to establish and construct an electro-telegraph line from the southern boundary of this Territory along the line of said wagon road, intersecting the Missouri River and Rocky Mountain telegraph line at or near Bozeman City, and for this purpose the exclusive right of way along said route, and twenty miles on each side thereof is hereby granted.

SEC. 9. The said corporation shall have power to consolidate with any other corporation of a like character in any State or Territory of the United States.

SEC. 10. The provisions of this act shall be and continue in force irrevocably for twenty years; but nothing herein contained shall interfere with the privileges vested in any other corporation by charter from this legislative assembly.

SEC. 11. This act is hereby declared to be a public act, and as such shall be construed favorably to said corporation in all courts.

SEC. 12. This act shall take effect and be in force from and after the date of its approval by the governor.

[Approved January 20, 1865.]

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AN ACT to incorporate the Bozeman City and Milk River Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That W. Y. Pemberton and T. C. Everts, and their associates and assigns be, and they are hereby, constituted a body politic and corporate, under the name and style of the Bozeman City and Milk River Wagon Road Company.

SEC. 2. The capital stock of said corporation shall be two hundred thousand dollars, and shall be divided into shares of one hundred dollars each, which shall be transferable only on the books of the company in person or by attorney.

SEC. 3. The said corporation shall be capable, in their corporate capacity, of suing and being sued, impleading and being impleaded, in all the courts of law and equity in this Territory, and may have and use a common seal and alter the same at pleasure; may ordain by-laws for their government, and alter or repeal the same; may elect a president, secretary, treasurer, and board of directors; may buy, sell, and hold property, both real and personal, and do all other things necessary to carry out the provisions of this act.

SEC. 4. The said corporation shall have power to locate and maintain a toll wagon road from Bozeman City to or near the mouth of the Mussel-shell river, at such point as they may determine, thence by the most practicable route to a point at or opposite to the mouth of Milk river, said route to be determined by said corporation: *Provided*, the said corporation shall locate and survey the said route and file a plat of such location and survey with the auditor of the Territory, within twelve months after the passage of this act.

SEC. 5. Said corporation shall have the exclusive right of way for ten miles on each side of said road, and may establish toll gates at such points as they may deem proper, not to exceed in the aggregate one to each forty miles of the road; and at such toll gates there may be collected tolls at rates not exceeding in the aggregate the following for every forty miles of road, to wit: For each span

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of horses or mules or yoke of oxen, two dollars, for each additional span or yoke, one dollar; for each pack animal, one dollar; for each horse and rider, one dollar; for each head of loose stock, twenty-five cents.

SEC. 6. Said corporation shall have power to establish ferries or build toll bridges across all streams along the line of said road which are not fordable at all seasons of the year; and no ferries or bridges shall be established within ten miles of the ferries or bridges of said corporation in any direction. And any person who shall wantonly or maliciously injure or destroy any of said company's ferries or bridges shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, in the discretion of the magistrate before whom the conviction may be had.

SEC. 7. The said corporation shall have power to locate and establish town sites at the termini of said route, and at the crossing of the Mussel-shell River, and at such other points as they may determine, and for this purpose they may pre-empt and take up and hold at each point so located three hundred and twenty acres of land, which they may lay off into lots, blocks, and streets, and may hold or dispose of the same as they may deem proper: *Provided*, That nothing herein contained shall interfere with the rights of prior occupants of the land so taken up.

SEC. 8. The said corporation shall have power to consolidate with any other corporation of a like character in any State or Territory of the United States.

SEC. 9. The provisions of this act shall be and continue in force irrevocably for twenty years.

SEC. 10. This act is hereby declared to be a public act, and as such shall be construed favorably to said corporation in all courts.

SEC. 11. This act shall take effect and be in force from and after the date of its approval by the governor.

[Approved January 20, 1865.]

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AN ACT to incorporate the Beaver Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That M. Cartwright, George Horne, William Insly, W. Hopkins and others, who are or may be associated with them for that purpose, their successors are hereby incorporated a body politic and corporate, by the name and style of the Beaver Town Company; by that name shall be capable of sueing and being sued, impleading and being impleaded in all courts in this Territory having jurisdiction in such cases. Said company may have and use a common seal, and may alter the same at pleasure, and make all rules and regulations not inconsistent with the laws of the United States and the Organic Act of Montana Territory, and appoint such officers for the management of its affairs as the company may deem necessary.

SEC. 2. The said corporation shall have power to hold, manage and control one hundred and sixty acres of land, now owned and occupied by said Beaver Town Company, and to sell, improve and convey any lots or property situated in said tract of land.

SEC. 3. The said company shall have power to make additions to the said town tract, as they may deem proper, not infringing on the rights of other persons.

SEC. 4. This act to be in force from and after its passage.

[Approved January 20, 1865.]

AN ACT to incorporate the Beaver Head Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That N. P. Sangford and William A. Spencer, and their heirs, assigns, and associates, be, and are hereby, constituted a body politic and corporate, under the name and style of the Beaver Head Mining Company.

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SEC. 2. The capital stock of said corporation shall be limited to four hundred thousand dollars, and shall be divided into shares of one hundred dollars each. It shall be deemed personal property, and shall be transferable only on the books of said corporation, in such manner as the by-laws shall prescribe; and said corporation shall at all times have a lien upon all the stock of its members, and all property invested therein, for all debts due from them to said corporation.

SEC. 3. A majority of the stockholders may by vote make such assessments upon each and every share of stock in said corporation as they may deem proper, until the whole amount is paid in; but no assessment shall be made at any one time for a greater sum than five dollars on each share of stock.

SEC. 4. The secretary of said corporation shall give notice by publication in at least one newspaper — if any there be — in the Territory, of all assessments ordered, at least ten days before such assessments are due; and all stock on which the assessments remain unpaid for twenty days after they become due may be forfeited for the use and benefit of said corporation.

SEC. 5. The said corporation shall, in their corporate capacity, be capable of suing and being sued, pleading and being impleaded, answering and being answered unto, and appearing and prosecuting to final judgment in all courts whatsoever. They may have a common seal, and alter the same at pleasure; elect, in such manner as they may determine, all necessary officers, fix their compensation, and define their duties; ordain and establish by-laws for the regulation of their affairs, and alter and repeal the same; and employ all such agents, mechanics, and laborers as they shall deem proper.

SEC. 6. This corporation shall have the power, in their corporate capacity, to contract and be contracted with; to buy, sell, and hold property, real and personal; to purchase, pre-empt, hold, sell, or work any gold or silver quartz lodes, or gulch, creek or bar claims, under, and subject to the laws of this Territory and the mining district wherein said lodes or claims are situated. They shall have full power to make and execute, under their corporate seal, bonds and mortgages upon said lodes or claims. They may borrow money upon the said bonds, or upon the notes of the corporation, at such rates of interest as they think proper; and all such mortgages, notes, or bonds, and all other writings signed by

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the president and secretary of said corporation, in their official capacity, shall be binding upon said corporation.

SEC. 7. The annual meeting for the election of officers of said corporation shall be held at such time and place as a majority of the stockholders, for the time being, may appoint, or the by-laws shall prescribe; and at all elections each share of stock shall be entitled to one vote. But if any election of officers shall not take place, or in case of a failure to hold the regular annual meeting, said corporation shall not thereby be dissolved, but the persons then holding the several offices shall continue to hold the same till their successors are elected and qualified.

SEC 8. This act shall continue and be in force, irrevocably, for twenty years from and after its passage.

SEC. 9. This act is hereby declared to be a public act, and as such shall be construed favorably to said corporation in all courts.

SEC. 10. All acts and parts of acts conflicting herewith, if any there be, are hereby repealed.

[Approved January 24, 1865.]

AN ACT incorporating and granting a right to the North Side Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That M. J. McDonald, James D. Doty and H. M. Mandeville, and their heirs and assigns, are hereby created a body politic and corporate by the name and style of the North Side Ditch Company, and by that name they and their assigns shall have ten years succession, may contract, sue and be sued, plead and be impleaded in all courts, and may purchase, hold, lease, sell and convey any estate and property, either real or personal or mixed, for the purposes of said company.

SEC. 2. The capital stock of said company shall be one hundred thousand dollars, which may be increased by the board of directors to any sum not exceeding five hundred thousand dollars, and divided into shares of one hundred dollars each which shall be personal

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estate. Certificates of said stock shall be issued by the directors, or a majority of them, to the present owners above named of the shares in the stock of the North Side Ditch Company, an association heretofore organized with thirty shares of stock at Bannack, Beaver Head county, in the same proportion as the same are now held by them, to wit: To M. J. McDonald twenty-one shares, to James D. Doty six shares, and to H. M. Mandeville three shares, and said certificates shall be transferable by endorsement.

SEC. 3. The powers of said company shall be vested in and exercised by a board of directors who shall be stockholders therein, but until the first election the corporators herein named shall be the directors and shall continue until their successors are duly elected and any vacancy occurring in said board by death, resignation, refusual or inability, or by a director ceasing to be a stockholder by the transfer of his stock or otherwise, shall be filed by the remaining members of said board, and the said board may adopt by-laws for the regulating and conducting the affairs and business of said company, and the appointment of such officers or agents as may be necessary, not inconsistent with the laws of this territory or of the United States, and they may make, execute and acknowledge all deeds and other instruments of writing required to be made in the course of the business of said company.

SEC. 4. The said company shall have power to continue their dam across Grasshopper Creek in the said county of Beaver Head, and the ditch known as the North Side Ditch, or to construct a new dam at or near the site of the present dam and to flow so much land thereby as may be necessary for mining or sluicing and for mills and other machinery, to enlarge and deepen the said ditch if required for said purposes, and to extend the same to and below the canon of said creek: *Provided*, no clause in this section shall be so construed as to interfere with any prior rights acquired by any person or persons, claimant or claimants, on Grasshopper Creek below said dam to purchase or construct one or more quartz or other mills to be supplied with water from said ditch and to work the same with water or steam, to purchase, lease, sell or work mining claims or leads supposed to contain ores or metals, and to construct all such buildings, smelting, roasting and refining furnaces, engines, and all kinds of machinery and other appurtenances, and to make changes or additions thereto according to the most approved plan at any

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future time; to borrow money for the purposes aforesaid, and secure the repayment of the same by bond and mortgage on the property of the company, and to give evidence of indebtedness by its agents in the transaction of the business of the company which shall be binding upon said company, and said company shall have the privilege of buying and selling or trading in and working all kinds of minerals and metals and gold and silver bullion as they may deem best: *Provided*, That nothing in this section shall be so construed as to allow the company to use more than one thousand inches of water and, *provided, further*, that all water conveyed in said ditch and not used by said company, shall be sold by said by said company at such price and in such manner as the board of county commissioners shall regulate and direct.

SEC. 5. On the first Monday in July annually, between the hours of ten in the forenoon and three in the afternoon, at such place as the board may appoint, an election for three directors shall be held to serve for the ensuing year and until their successors are duly elected. All elections shall be by ballot, every stockholder being entitled to one vote in person or by proxy for each share of said stock owned by him and the persons receiving the highest number of votes shall be declared duly elected if qualified.

SEC. 6. All persons who shall wantonly or maliciously interfere with or injure said company's works shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than twenty dollars, nor more than three hundred dollars, or be imprisoned not more than six months.

SEC. 7. This act to take effect and be in force from and after its passage.

[Approved January 24, 1865.]

AN ACT to incorporate the Madison River Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Hezekiah L. Hosmer, James Gibson, William Chumasero, Wilbur F. Sanders, Gaylord G. Bissell, J. D. Ritchie, George Hill, Henry Thompson, A. V. Brookie, William H. Miller,

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William L. McMath, and their associates and successors and assigns be, and they are hereby constituted a body corporate and politic, with perpetual succession, by the name and style of "The Madison River Ditch Company," and by that name shall be capable of suing and being sued, defending and being defended in all courts and places, and in all manner of actions, causes and complaints whatsoever; may have a common seal, which they may alter and use at pleasure; and by their corporate name may purchase, hold, use and convey property real and personal; may make all necessary contracts, for locating and building the said ditch, and for carrying on the business of the said company, and do all other acts necessary or expedient in the progressive stages and operations of said company, not inconsistent with the Constitution and laws of the United States or of this Territory.

SEC. 2. The said company are hereby authorized and empowered at any time within five years from and after the passage of this act, and shall have the exclusive right to commence the construction of a ditch from some feasible point on the Madison Fork of the Missouri River, which when completed, shall connect the waters of said Fork with the summit of the gulch—or near that point—known as Alder Creek Gulch, and may also construct lateral branches of said ditch leading down the several gulches heading at said summit.

SEC. 3. The said corporation shall have exclusive control of the waters thus taken out, and may use the same for irrigation, mills and machinery of any kind, and for sluicing and hydraulic purposes, and all other mining uses; may sell, lease and dispose of the same or any portion thereof, for any or all the above purposes, and on such terms and conditions as the parties may agree And shall have the right to build and construct a bed-rock flume from the confluence of Alder Creek with Stinking-water Creek to the head of said Alder Creek. Said ditch and flume may be of sufficient capacity to carry as much water as may at any time be deemed necessary for the purposes above mentioned. Said company may hold as real all lands which it may be necessary to pre-empt in the construction of said work, and all claims which they may acquire in said Alder Gulch, by pre-emption, purchase or otherwise.

SEC. 4. The capital stock of said company shall not exceed five million dollars, which may be divided into shares of one hundred

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dollars each, and transferable on the books of said company in such manner as the by-laws shall ordain, but no transfer shall be valid until it shall have been registered on the books of said company kept for that purpose.

SEC. 5. At all meetings of the stockholders, each share of stock on which all assessments have been paid, shall be entitled to one vote, either in person or by proxy in writing, and a majority of votes present shall determine all questions submitted to the stockholders.

SEC. 6. The annual meeting of the stockholders shall be held on the first Monday of August, at which meeting seven directors of the company shall be elected, and all other business deemed necessary by the stockholders transacted; and should they fail to elect directors at the annual meeting, they may hold a special meeting at some subsequent time for that purpose, by giving thirty days notice in some newspaper of general circulation, or by written notices posted in three of the most public places in Madison County. The directors shall hold their offices until their successors are elected and qualified. But no person shall be a director after ceasing to be a stockholder. Immediately after the election, the directors shall elect one of their number president, and may appoint such other officers and agents as they may deem necessary to transact their business, and prescribe the amount of compensation to be paid them for their services; and such other officers, when required by the by-laws, shall give bonds to the satisfaction of the directors for the faithful discharge of the trusts committed to them. The directors may make their own by-laws, for their board, but subject to the approval of the stockholders. All questions in the board of directors shall be decided by a majority of the directors present, and a majority of the directors shall constitute a quorum for the transaction of business. Vacancies in the board may be filled by the remaining directors. The directors shall have the general management of the affairs of the company, subject always to the control of the stockholders. The directors shall cause a record to be kept of all business transactions, and their books and records shall at all reasonable times be open to the inspection of any stockholder. They shall also, when required, present to the stockholders reports in writing of the situation and amount of business of the company, and declare and make such dividends from the

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profits of the business of the company, not reducing the capital stock, while they have outside liabilities as they may deem expedient.

SEC. 7. The persons named in this act, or a majority of them, shall be commissioned to open books for subscription to the capital stock of said company at such times and places as they may deem proper. And the said company are authorized to commence operations at any time after five thousand dollars are subscribed.

SEC. 8. The president and directors of said company shall have power at any of their meetings to require the payment of all the capital stock of the said company to such persons and at such times as they may deem proper, upon ninety days notice, of the amount of said instalment as may be required, and at the time when the same shall be paid, in some newspaper of general circulation, in Madison County; and if any stockholder shall fail to pay up said instalment as shall be required by the president and directors as aforesaid, the directors shall have power to sell such share or shares as shall be delinquent, at public auction, to the highest bidder, after giving thirty days notice in the manner prescribed above.

SEC. 9. For the purpose of raising funds from time to time, for the more effectual carrying on of said work and the business of the company, the said company may borrow money and issue their notes or bonds, in such sums as they may deem proper, not to exceed at any one time, their authorized capital, and at such rates of interest as may be agreed on, and payable at such times and places as they may designate, and may secure the payment of such notes or bonds by mortgage of their property and franchises, to be executed by said company, and may make such bonds convertible into stock of the company.

SEC. 10. This act shall take effect and be in force from and after its approval by the governor.

[Approved January 24, 1865.]

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AN ACT to incorporate the Prickly Pear and Virginia City Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Warren C. Gillett, James H. Kiskadden and Evan P. Lewis, are hereby created a body corporate and politic, for the purpose of building and constructing a wagon road from the Little Prickly Pear Creek to Virginia City, by the most direct route.

SEC 2. Said company shall be known as the Prickly Pear and Virginia City Wagon Road Company, and by that name and style may sue and be sued, plead and be impleaded, and make such contracts as may be necessary to the prosecution of the business of their association.

SEC. 3. Said company and their associates and assigns shall have the exclusive right of building said road as follows, to wit: commencing at Virginia City, running via Heister's Ferry, on the lower Point of Rock near the Hot Springs on Jefferson river, thence up White-tail Deer creek about twenty miles, thence northerly to the head waters of Prickly Pear creek, thence down the Prickly Pear valley, and on to the junction of the Mullen wagon road; and also, the exclusive privilege of collecting tolls thereon at the following rates, to wit: For each wagon drawn by two animals, three dollars; each additional pair, one dollar; each horseman, fifty cents; each pack animal, fifty cents; for loose stock, twenty-five cents per head.

SEC. 4. Said company shall at all times keep and maintain said road in good repair and condition for travel; and on failure to do so, any person who may travel said road and find it in bad condition, shall have the right to make complaint before any justice of the peace in any county in which any part of said road is located; and it shall be the duty of the justice of the peace to summon the said company, or any member thereof, to appear before him to answer in said complaint, within not over ten days from the date of said complaint; and if it be found that said road is in bad condition

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or unsafe to travel, it shall be the duty of said justice to impose a fine of not less than ten dollars nor more than twenty dollars, to be collected from said company, and said person shall not by reason of making such complaint be considered incompetent to testify in such case; and said justice shall issue his order, that no toll shall be collected upon said road, or any part thereof, until it is put in good repair.

SEC. 5. Said company may keep and maintain two toll gates, at which to take and collect the tolls above named, one about one mile above the town of Montana, in the Prickly Pear valley, and one in the canon about three miles nearly south of Boulder creek, on said road.

SEC. 6. Said company shall enjoy the rights and privileges above granted, for a period or term of ten years.

SEC. 7. Nothing herein contained shall be so construed as to prevent the county commissioners, after the term of two years after the passage of the charter, from correcting the rates of tolls herein named, and establishing such rates as to them may seem right and just, upon the petition and request of fifty citizens of this Territory. Nor shall anything in this act be so construed as to permit said company to collect, at all the gates on said road, any other or more toll than is allowed by the provisions of section three of this act.

SEC. 8. This act shall be in force from and after its passage.

[Approved January 24, 1864.]

AN ACT to incorporate the Missouri River Portage and Railroad Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That N. W. Burris, Sidney Edgerton, G. E Upson, Wm. Chumasero, E. P. Lewis, J. H. Kiskadden, F. Moore, G. W. Stapleton, Osee Matthews, and F. M. Thompson, be and they are hereby created a body corporate and politic by the name of the Missouri River Portage and Railroad Company, for the term of twenty years, and by that name may sue and be sued, plead and be

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impleaded, and have a common seal which they may alter and use at pleasure, and shall be able to make contracts, to take, hold, possess, use and enjoy, the fee simple or other title on such real or personal estate as may be necessary to prosecute the business of their association, and may sell and dispose of the same for like purpose, may make and execute by-laws, rules and regulations, for carrying into effect the provisions and purposes of this act not inconsistent with public law, and shall have the usual and necessary powers of corporations for the accomplishment of its objects, which are declared to be the construction of a wagon or railroad or both, for the purposes of transporting passengers, freight and mails around the Great Missouri Falls, on the following described routes, to wit: Commencing at a stake now standing near the mouth of Highwood Creek, below the Great Missouri Falls, and running around the same to another stake just above said falls on the Missouri river.

SEC. 2. Said company and their associates and assigns shall have the exclusive right to construct said road or roads, for a distance of five miles in width along said route on each side of the Missouri river.

SEC. 3. Any seven of the above named corporators shall constitute the first board of directors and shall hold their offices until their successors shall be elected and qualified. They shall meet at such time and place as shall be designated by any five of them, and organize as a board of directors, and when organized shall cause a book or books to be opened to receive subscriptions to the capital stock of said company at such time or times, and place or places, and under charge of such persons as they may designate; may continue such book or books open as long as they may deem proper, and may reopen the same at pleasure.

SEC. 4 When five thousand dollars shall be subscribed the directors shall call a meeting of the stockholders for the purpose of electing seven directors and shall appoint the time and place of such meeting, giving at least five days public notice of the same by advertisement in a newspaper in said Territory of general circulation.

SEC. 5. The capital stock of said company shall be two hundred thousand dollars, which may be increased to five hundred thousand dollars, and shall be divided into shares of one hundred dollars each.

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SEC. 6. The stockholders shall meet annually on the first Monday of July for the purpose of electing directors, at such place as may be designated by the by-laws of the company, of which at least twenty days public notice shall in a newspaper of general circulation in said Territory. Each share of stock shall be entitled to one vote, which may be cast in person or by proxy; no person not a stockholder shall be elected a director, and any director ceasing to be a stockholder shall no longer be such director. Vacancies may be filled by the remaining directors. The directors shall hold their offices for one year and until their successors are elected and qualified.

SEC. 7. The stockholders may make such by-laws as they may deem necessary for the transaction of the business of the company, not inconsistent with the laws of the United States or of this Territory.

SEC. 8. The directors may appoint such officers, agents and servants as may be necessary and fix their salaries and take such security as they may deem expedient, and shall keep a journal of their proceedings, shall cause correct books and accounts to be kept, and determine by their by-laws what number of directors shall constitute a quorum, and fill all vacancies that may occur in any office under such company.

SEC. 9. It shall be the duty of said company to complete said road or roads at such time specified as follows: A wagon road within two years, and a railroad within five years after the passage of this act, otherwise this franchise shall be void.

SEC. 10. If any stockholders shall fail to pay any assessment upon his stock within thirty days after a regular call therefor, the board of directors may advertise and sell the same, or so much thereof as may be necessary, at public auction to the highest bidder, of the time and in the manner prescribed by law, for sales of real estate on executions at law.

SEC. 11. Shares of stock in said company shall be transferable on a book to be kept for that purpose by the company, and in such manner as may be ordained by the by-laws.

SEC. 12. Stockholders shall be liable only to the amount of stock held by them severally.

SEC. 13. Said company shall have power to employ in their business any method of transportation they may deem advisable,

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determine what kind of carriages or conveyances and power shall be used by them, and the terms, conditions and manner in which they will transport merchandise, property and passengers, and shall have power to contract for and keep such offices, warehouses, toll-houses, passenger-houses, gates, bridges, culverts, causeways, machinery and other fixtures, as they may deem necessary.

SEC. 14. The said company are hereby authorized to borrow from time to time, such sum or sums of money as may be necessary to complete and stock the said road, at a rate of interest not to exceed sixty per cent. per annum, payable at such times and places as may be agreed upon between the parties to such loan, and may secure the repayment of the same by mortgage or pledge upon the property of said company, real or personal or both, and issue the note or notes and bond or bonds of the company therefor.

SEC. 15. The said company are hereby authorized to establish offices at such places in said Territory, and in the city of St. Louis, and in such other city or cities as they may deem necessary for the transaction of their business: *Provided*, That nothing in this act shall be so construed as to prevent the county commissioners of the county in which said road or roads are located from establishing and regulating the rates of toll and freight to be paid.

SEC. 16. This act shall take effect and be in force from and after its approval by the governor.

[Approved January 24, 1864.]

AN ACT to incorporate the Excelsior Coal Mining and Manufacturing Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That William Chumasero, L. A. Gridley, Christian Mead, A. W. Hall, Ammi Higgins, George B. Stevens, E. F. Phelps, Andrew J. Smith, W. F. Sanders, William H. Miller, and L. C. Miller, and their associates, are hereby incorporated a body politic, under the name and style of the Excelsior Coal Mining and Manufacturing Company, the capital stock of which is one hundred thousand dollars, which may be increased from time to time until

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it reaches a sum not to exceed five hundred thousand dollars, to be divided into shares of one hundred dollars each, and by the name aforesaid shall have continued succession; may sue and be sued, plead and be impleaded, in all courts of law and equity in this Territory; and may have and use a common seal, and alter the same at pleasure; and shall be able in law and equity to make contracts, to take, hold, possess, use, and enjoy the fee simple or other title in such real and personal property, as may be necessary to prosecute the business of their association, and may sell and dispose of the same as they may see fit; may make and execute by-laws, rules, and regulations proper and needful for carrying into effect the provisions and purposes of this act, not inconsistent with public law, for the accomplishment of its objects, which are hereby declared to be the discovery, acquisition, and working of coal beds or mines, fire clay, or porcelain clay beds, and oil springs.

SEC. 2. The said incorporation shall have the right and power to use all water power or privilege necessary or needful for their mining and manufacturing purposes, to build dams, erect machinery, and run ditches whenever and wherever the same does not infringe upon or interfere with the prior rights of other parties, also to build such railroads or wagon roads as may be necessary to bring said coal or manufactured articles to market, and the right of way for such purpose is hereby granted to said incorporation not to infringe upon prior rights.

SEC. 3. A majority of the abovenamed incorporators shall constitute the first board of directors under this act, and they shall hold their office until their successors are elected and qualified; they shall meet at such time and place as may be designated by a majority thereof. The said directors shall at their first meeting elect one of their number president of said company, and said directors shall conduct and manage the affairs of said company.

SEC. 4. The annual meetings of the stockholders of said company shall be held on the first Monday of May of each year. The said stockholders at such meeting shall have power to make, alter, amend, or repeal, by a majority of votes given, any or all such by-laws, rules, orders, or regulations, and do and perform any other act authorized by this act.

SEC. 5. The directors shall appoint such officers, agents, and servants as may be necessary, and fix their salaries, shall keep a

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journal of their proceedings, shall cause correct books and accounts to be kept, determine by their by-laws what number of directors shall constitute a quorum for the transaction of business, and appoint to and fill all vacancies that may occur in any office created by the said company.

SEC. 6. For the purpose of raising funds from time to time for the more effectual establishment and operation of the business of the said company, the company may issue their bonds in such sums as they may deem proper, not to exceed at any time their authorized capital, at rates of interest not exceeding fifteen per cent. per annum, payable semi-annually, and the principal of said bonds payable at such time and place as they may designate, and may secure the payment of said bonds by mortgage on their property and franchises, to be executed by said company, and may make such bonds convertible into stock of said company.

SEC. 7. When said company, either by themselves of their agents, shall discover a coal or clay bed or vein, they shall file a certificate of the same in the recorder's office of the county where such discovery may be made or located; and the said company, by its incorporate name, shall be entitled to take up, locate, or preempt six hundred and forty acres of land on which said coal or clay bed shall be situated.

SEC. 8. That any person or persons who shall interfere with or who shall wantonly or maliciously injure any of the said company's works, improvements, or appurtenances thereunto belonging, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or imprisoned not to exceed six months, or by both such fine and imprisonment, at the discretion of the court.

SEC. 9. All transfers of stock shall only be valid when transferred in accordance with the by-laws of said company.

SEC. 10. This act shall be in force from and after its passage.

[Approved January 24, 1865.]

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AN ACT granting to Frank H. Woody, C. E. Irvine, their associates and successors, the right to establish and maintain a ferry or bridge across the Hell Gate River.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Frank H. Woody, C. E. Irvine, their associates and successors, shall have the exclusive right to establish a ferry or build a bridge across the Hell Gate River, at a point near the mills belonging to the Missoula Mill Company, and for one mile along said river above and below said ferry or bridge, and to maintain and operate the same for the term of ten years, with the privileges, and subject to the conditions of this act.

SEC. 2. So long, not to exceed ten years, as the said Frank H. Woody, C. E. Irvine, their associates and successors, shall maintain, operate and carry on a good, safe and sufficient ferry, or maintain a good, safe and sufficient bridge, across said Hell Gate River, at the point designated, they shall be authorized to collect the following rates of toll, to wit: For each wagon, or vehicle, drawn by one pair of animals, four dollars; for each additional pair of animals, one dollar; for each man and horse, and for each animal packed, one dollar and fifty cents; for each head of loose animals, horses, mules or cattle, one dollar; for footmen, fifty cents; for sheep, goats and hogs, each, twenty-five cents.

SEC. 3. The said Frank H. Woody and C. E. Irvine, their associates and successors, shall be held and obligated from the fifteenth day of March, of each year, until the river shall become so low, that it can be forded with ease and safety, to keep said ferry or bridge in good, safe and sufficient order and condition for use at all reasonable hours. And so long as no bridge be constructed, they shall keep a competent ferryman, and sufficient number of hands to work the boat, who shall transport travellers and property across said river at all reasonable hours and without unnecessary delay, under penalty of all damages sustained and the forfeiture of this charter.

SEC. 4. No section or part of this act shall be so construed as to prohibit the county commissioners from exercising the same

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authority over said ferry or bridge as they are authorized to exercise over other licensed ferries or bridges; and they may at their discretion, on a petition being presented, signed by twenty *bona fide* citizens of the county in which said ferry or bridge is located, alter and fix the rates of toll at any time after the expiration of two years after the passage of this act.

SEC. 5. This act shall take effect and be in force from and after its approval by the governor.

[Approved January 24, 1865.]

AN ACT to incorporate the Silver Mountain Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. For the purpose of developing the mineral resources of the country and encouraging and organizing the mining interests of the Territory of Montana, Robert Lawrence, C. E. Irvine and Wm. H. Means, and their heirs and assigns, and such other persons as may hereafter become associated with them, their heirs and assigns, and their successors, are hereby declared and constituted a body politic by the name and style of "The Silver Mountain Mining Company," and by and under such corporate name and capacity, may sue and be sued, may plead and be impleaded in any of the courts of law or equity in this Territory.

SEC. 2. Said corporation shall have perpetual succession, may have and use a common seal and alter the same at pleasure, and shall be capable of acquiring, holding, using and conveying any estate real or personal for the use of said corporation.

SEC. 3. The capital stock of said company shall not exceed the sum of five hundred thousand dollars, and shall be divided into shares of one hundred dollars each, and be represented by certificates for each share, and shall be deemed personal property and transferable by endorsement or on the books of said company, and each stockholder shall be liable to the amount of his stock.

SEC. 4. The officers of said company shall consist of a president, a vice president, recording secretary, corresponding secretary

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and treasurer, who shall, ex officio, constitute the board of directors to be elected by the stockholders and shall hold their offices for the term of one year or until their successors shall be elected.

SEC. 5. The board of directors may make rules and regulations for the government and for the carrying out of the objects, powers and franchises of said corporation; may alter or amend the same at any regular meeting.

SEC. 6. Said corporation shall have power to prospect for, locate, work and develop in their own name any quartz, lead, lode or ledges of gold, silver or other mineral or any kind of rock coal or other materials deposited or found in any leads, lodes or ledges, basins, measures, gulches or places, and to pre-empt, hold, sell, convey, work, use and develop the same in accordance with the district laws as relates to gulch claims, and the laws of the Territory.

SEC. 7. All elections shall be by ballot, and each share shall be entitled to one vote and may be given by person or proxy.

SEC. 8. This act shall take effect from and after its passage and approval by the governor.

[Approved January 24, 1865.]

AN ACT to incorporate the Missoula Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That F. H. Burr, G. G. Bissell, A. Young, E. F. Phelps, W. M. Barnum, F. H. Angevine, S. F. Hauser, G. B. Parker, and others who are and may be associated with them for that purpose, and their successors, heirs, and assigns, are hereby incorporated a body politic and corporate, by the name and style of the Missoula Town Company, and by that name shall be capable of suing and being sued, impleading and being impleaded, defending and being defended, in all courts of law and equity in this Territory having jurisdiction in such cases. Said company is authorized to have and use a common seal, to alter the same at pleasure, and to make such rules and regulations, not incompatible with the laws

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of the United States, the Organic Act of the Territory of Montana, or any of the acts of the legislative assembly of this Territory, and appoint such officers for the management of its affairs as the company may deem necessary.

SEC. 2. The said corporation shall have power to hold, manage, and control six hundred and forty acres of land now owned by said company at or near where Virginia City and Deer Lodge wagon road crosses the Big Hole River, and to sell, improve, or convey the lots, or any property, or any part of said tract, not incompatible with the laws of the United States, the Organic Act of the Territory of Montana, or any of the acts of the legislative assembly of this Territory.

SEC. 3. The said company shall have power to make additions to the said town tract as they may deem consistent, not intruding or infringing on the rights or prior possession of any other person or persons.

SEC. 4. That nothing in this act shall be so construed as to vest or give said corporation any rights or privileges on any part of said lands that may be owned by any other person or persons without permission of such person or persons.

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved January 24, 1865.]

AN ACT to incorporate the Virginia City and Summit City Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Benjamin F. Allen, Joseph H. Millard, Wiley C. Barton, John S. Atchison, A. M. Overman, and their legal associates and successors, are hereby constituted a body politic and corporate by the name and style of the Virginia City and Summit City Wagon Road Company, and by that name shall be capable of making contracts, of suing and being sued, impleading and being

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impleaded in all the courts of law and equity in this Territory, and may have and use a common seal, which may be altered at pleasure.

SEC. 2. The capital stock of said company or corporation shall be twenty-seven thousand dollars, and it shall be divided into shares of one hundred dollars each.

SEC. 3. That said corporation shall have power to make and afterwards alter all needed rules and regulations for the government of said company and the management of the road constructed by them, and shall elect a president, secretary, treasurer and superintendent at such time and place as the said company may agree upon, and on the first Monday in April, A. D. 1865, and annually thereafter to elect a president, secretary, treasurer and superintendent from the shareholders of said company, who shall hold their offices for one year and until their successors are elected and qualified: *Provided however*, That said company may, if they deem it advisable, unite the offices of president and superintendent in one person.

SEC. 4. All elections shall be by ballot and each stockholder shall be entitled to one vote for each share he holds, and votes may be given in person or by proxy.

SEC. 5. Said company are hereby authorized and empowered to hold, improve, complete, alter and maintain the wagon road owned and known as the Virginia City and Summit City wagon road, commencing at the City of Virginia in Madison county, thence running up Alder Creek by way of the town of Highland, thence following the general course of said creek, terminating at Summit City, a distance of eight miles, with the right of way of crossing and recrossing said Alder Creek with said road and bridging said creek at the crossing of the same when necessary: *Provided*, Said right of way shall not interfere with previous vested rights or with mining privileges without just and full compensation to parties injured by such right of way.

SEC. 6. That said company are authorized on the line of said road to erect two toll houses and the same number of toll gates, one of which shall be located at Highland and the other to be located near Virginia City on said road, and employ toll keepers who shall demand and collect toll when said road is in good condition, when to or from Virginia City to Summit City, at the following rates: For each wagon or vehicle drawn by one span of horses,

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mules, or yoke of oxen, or carriage drawn by one animal, three dollars; for each additional span of horses, mules, or yoke of oxen, one dollar; for each horseman one dollar; for each pack animal twenty-five cents; loose stock per head twenty-five cents; but nothing in this act shall be so construed as to allow said company to collect from any person travelling upon said road to and from toll gate at Highland, more than one half the rates of toll imposed by this act.

SEC. 7. That said company are authorized to maintain said road for the term of twelve years from and after the passage of this act, and to collect toll at the above mentioned rates on the same. Any person refusing to pay the above rates of toll after the same has been demanded by the authorized gate keeper, and is found travelling upon the road, every such person shall forfeit and pay to the said company the sum of twenty-five dollars for every such failure, to be recovered by an action of law by said company.

SEC. 8. Any person who may travel such road and find it in bad condition, after having paid toll at such time on the same, shall have the right to make complaint before any justice of the peace in the township or district in which or through which the road is located, and it shall be the duty of the justice of the peace to summon the said company, the president or secretary to appear before him to answer in said complaint within not over five days from the date of said complaint, and if it be found that said road is in bad condition or unsafe to travel, it shall be the duty of said justice to impose a fine of not less than ten dollars nor more than twenty-five dollars, to be collected from said company, and the proceeds arising from such fine shall be paid over by said justice one half to the complainant and the other half to the county treasury of the county in which said road is located, and be placed in the school fund for said county; the person making such complaint shall not by reason thereof be deemed incompetent to testify in such case and said justice shall in addition to said fine issue his order that no toll shall be collected upon said road so used or any part thereof until it is put in good repair.

SEC. 9. If any person shall wilfully or maliciously do or cause to be done any act or acts whatsoever, whereby any building or bridge, gate or other matter or thing appertaining to said road, by which the same shall be obstructed, weakened or destroyed, the person or persons so offending shall be guilty of a misdemeanor and

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shall forfeit and pay to said company triple the amount of damage thus sustained on such offender being found guilty upon trial before any justice of the peace of the township or district in which or through which said road is located.

SEC. 10. Said company shall have power to purchase and hold any real or personal property which may be necessary for the transaction of their business and to sell and convey the same when deemed proper.

SEC. 11. This act shall be in force from and after its passage.

[Approved January 27, 1865.]

AN ACT to establish a Water Company in Virginia City.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That A. M. Holter, O. Norelins and J. P. Oleson, and their associates, successors and assigns, are hereby constituted a body politic and corporate, under the name and style of the Virginia City Water Company, with all of the ordinary privileges, powers and liabilities of corporations, and by that name may sue and be sued, plead and be impleaded in all courts of the United States and in this Territory, and may have and use a common seal, and alter and change the same at their pleasure.

SEC. 2. The capital stock of said company shall be twenty-five thousand dollars, which may be increased to the sum of one hundred thousand dollars, and may be divided by said corporators and their associates into shares of fifty dollars, and which said shares when issued shall be transferable on the books of said company.

SEC. 3. The officers of said company shall consist of a president, secretary and treasurer, and three directors, who shall be elected annually by the stockholders on the first day of May, in each year, and who shall hold their offices until their successors shall be duly elected; but in case such election shall not, for any cause, be held, such election may be held at any time thereafter by giving one week's notice of the time and place of such election, which may be given by personal notice or by advertising the same one week in the newspaper published in said Virginia City,

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or if no newspaper be published in said Virginia City, then such advertisement shall be published in the nearest paper published to said Virginia City. At all elections each share shall be entitled to one vote.

SEC. 4. The said company are hereby authorized and empowered to bring and convey into said Virginia City, in Madison County, a supply of water for the use of the inhabitants thereof, and through any and all streets of said Virginia City, from any and all springs flowing or rising in Daylight Gulch, and to be conveyed in such pipes or conduits made of such materials as said company shall deem advisable and proper.

SEC. 5. The company shall place hydrants at each of the corners of block number forty-one, in said city; and the people of said city shall at all times have free access to the water in all cases of fire or other public emergencies when the same shall become necessary, and the said people of Virginia City shall also have the right for the purpose aforesaid, of placing other hydrants at such points as may be deemed necessary.

SEC. 6. Said company shall have the right to convey by suitable pipe or pipes, water for the use of any building or house in said city, and for all the purposes of their business may dig trenches in and through or across any of the streets of said city, for the purpose of laying any water pipe.

SEC. 7. Said company shall have the right to pass any by-laws, rules or regulations for their own government and for regulating the use of the water, not inconsistent with the provisions of this act or the laws of the United States or of this Territory.

SEC. 8. Said company shall have the right to charge such person or persons, or the occupants of any store or building or family, such sum or sums of money for the use of the water so brought and conducted into said Virginia City, as shall be fixed on by the board of directors, and which shall be payable at such time or times as may be agreed upon by and between the board of directors and the person or persons using the same.

SEC. 9. If any person or persons shall knowingly and designedly use the water aforesaid with intent to use the same without a permit first obtained for that purpose, he shall upon conviction thereof be subject to a penalty of not less than five dollars nor more than fifty dollars for each offence, to be recovered before any court

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having jurisdiction thereof in the name and for the use of said company.

SEC. 10. Said company shall at all times keep and maintain the pipes in good repair and furnish a sufficient and constant supply of water for the purposes aforesaid unless prevented by accident or inclemency of the weather.

SEC. 11. If any person or persons shall neglect or refuse to pay any sum or sums of money due to said company on the account of the use of any water owned by said company, the same may be collected by suit in the name of said company; and said company shall also have the right to stop the supply of such person or persons.

SEC. 12. It shall be the duty of said company to convey water from their main pipe or pipes to any house or building in said city, upon request of the occupant thereof, but said company shall not be compelled to do so unless the actual cost of laying the pipe necessary for that purpose be paid by such applicant.

SEC. 13. The said company shall have all the rights and privileges hereby granted for twenty years from and after the passage of this act.

[Approved January 27, 1865.]

AN ACT to incorporate the Jefferson Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. Albert G. Clark, Robert C. Ewing, Eli C. Mason, D. B. Curtis, and Edwin H. Erwin, are hereby constituted a board of corporators for the Jefferson Mining Company, and by that name and style may sue and be sued, plead and be impleaded, in the courts of record in this Territory.

SEC. 2. Said company shall have the power to buy and sell gulch mining claims, and gold and silver lodes, and stone coal lodes, to build furnaces and crushing mills, to hold water privileges, and to use and employ all machinery that they may deem necessary in carrying on the mining business in all its departments and details.

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SEC. 3. The capital stock of said company shall be two hundred thousand dollars, divided into shares of five hundred dollars; and each holder of the stock of said company shall be entitled to cast one vote for each share of stock he may hold, in all elections for directors of said company, and for the election of such other officers as may be authorized by this act.

SEC. 4. Said corporators shall open books for the subscription to the capital stock of said company within sixty days from the passage of this act, in Virginia City, and when the sum of one hundred and twenty thousand dollars has been subscribed, the said corporators shall notify said subscribers of stock, that they shall on a day to be named proceed to elect seven directors of said company.

SEC. 5. Said stockholders may vote by proxy.

SEC. 6. When said directors shall be elected, they shall hold their offices for one year and until their successors are duly elected, and shall take possession of and control of the property and assets of said company, and shall have generally all such powers and privileges as may be necessary to carry on the business of said company, and to make such by-laws for that purpose as may be needful, within the purport and meaning of this act.

SEC. 7. This act shall take effect and be in force from and after its passage.

[Approved January 27, 1865.]

AN ACT to dissolve the Bonds of Matrimony existing between Homer R. Payne and Adaline Payne.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. The bonds of matrimony existing between Homer R. Payne and Adaline Payne, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to be in force from and after its approval by the governor.

[Approved January 27, 1865.]

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AN ACT to incorporate the Nevada City and Red Rock Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Nelson M. Parsons and his legal associates are hereby constituted and declared a body politic and corporate, under and by the name and style of the Nevada City and Red Rock Wagon Road Company, and by that name may sue and be sued, plead and be impleaded, and shall have a common seal, which may be altered at pleasure.

SEC. 2. The main line of said road shall extend from the city of Nevada, in Madison county, and Territory of Montana, to the Stinkingwater canon; thence through said canon to the big bend of the Stinkingwater; thence across the dividing ridge to Black Tail Deer Creek; thence to the Red Rock Creek; thence to the station on the Salt Lake City and Bannack City road, known as the Junction.

SEC. 3. It shall be lawful for said corporation to acquire and hold any real estate necessary for the use of toll keepers on the line of said road, and for no other purpose whatsoever, and to sell, dispose of, and convey by deed any real estate so used and occupied for the use of toll keepers on said road whenever they shall deem it for the interest of said corporation to do so.

SEC. 4. Said corporation shall have power to make and afterwards to alter and change all needful rules and regulations for the government and management of said road, and may elect a president, secretary, and treasurer at such time and place as the said corporation herein mentioned may agree upon, and annually thereafter to elect a president, secretary, and treasurer, who shall be shareholders in said company. *Provided, however*, That the said president, secretary, and treasurer may be united in one person if deemed advisable by said corporation.

SEC. 5. Said corporation shall have power and authority to build, erect, any maintain bridges across the several streams on the main line of said road.

SEC. 6. Said corporation, by their agents, shall have power and

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authority for a term of twelve years to collect toll as hereinafter mentioned from all persons travelling upon and over said road with wagons or vehicles of any sort, with horses, mules, asses, and with cattle, sheep and swine; and any person who shall pass any toll gate upon said road authorized to be erected and established by said corporation, without having first paid toll as required by this act, shall forfeit and pay for each and every offence the sum of twenty-five dollars, to be recovered by an action of debt by said corporation.

SEC. 7. In all recoveries had by said corporation, as provided in the last preceding section, one-half of the sum so recovered shall be for the use of the informant and the other half for the use of the county in which said toll gate may be situated; and it shall not be necessary in the demand of the plaintiff that the sum sued for, as provided in the last preceding section, shall be stated to be for the use of the informant and the said county, nor shall the interest of the informant in the recovery of said one-half of said sum preclude him from testifying in the case, nor shall it preclude any citizen of the Territory from so testifying on behalf of the plaintiff.

SEC. 8. There may be erected upon the main line of said road, toll gates to the number of two, and no more; neither toll gates mentioned shall be erected on the said road between a point one mile from the mouth of the Canon on Alder Creek, towards the Stinking Water Canon and the said City of Nevada, at which gates respectively, there may be collected upon all wagons, vehicles, horses, mules, asses, cattle, sheep and swine passing over said road, the following tolls, and no more, viz: Upon each wagon or vehicle, drawn by one span of horses, mules or cattle, the sum of two dollars; upon each additional span of horses, mules or cattle to each wagon or vehicle, the sum of fifty cents; upon each riding horse, packing horse or mule, the sum of twenty-four cents; upon horses, mules, cattle and asses driven loose, the sum, per head, of five cents; upon all sheep driven upon said road, one cent, per head; upon all pack animals driven upon said road, the sum of ten cents.

SEC. 9. It shall not be lawful for any gate keeper on said road to collect tolls from any person passing through said gates, either in wagons, vehicles or on horse back or on mules, when going to or returning from funerals.

SEC. 10. Upon complaint being made to any justice of the peace

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in any county through which said road extends, that any portion of said road is not in reasonably good condition for wagons or vehicles, the said justice shall summon the gate keeper nearest the place on said road complained of, to appear before him on a certain day not more than five days from the day of complaint at a certain hour in the day to be by the justice fixed, and if it shall appear to the justice that the complaint is true, judgment shall be rendered against the said corporation as defendant for the costs of the proceedings and damages, and thereupon no tolls shall be collected by said gate keeper so summoned, until the said road shall be put in good repair for the passage of wagons and vehicles.

SEC. 11. If any gate keeper shall demand and collect any tolls before the said road shall be re-opened and made passable as provided in the preceding section, he shall forfeit and pay the sum of twenty-five dollars, which may be sued for by any person in an action for debt for the use of the informant, before any justice of the peace of the county in which said gate keeper shall reside. *Provided however*, That if by reason of snow or high water, it shall not be possible for any person with reasonable expense to repair said road, a reasonable time shall be allowed for repairing the same before any judgment for costs shall be rendered against said corporation or said gate keeper shall be restrained from the collection of tolls as provided in section ten of this act. But no toll shall be collected while said is out of repair.

SEC. 12. This act shall take effect from and after its passage.

[Approved January 28, 1865.]

AN ACT to incorporate the Montana Bridge and Ferry Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That P. S. Pfouts, James Williams, J. S. Scott, Wm. P. Wheeler, A. Young and M. H. Lott and their legal associates and successors be and are hereby incorporated as a body politic and corporate, to continue for the term of ten years, by the name and style of the Montana Bridge and Ferry Company, and by that

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name shall be capable of making contracts, of suing and being sued, pleading and being impleaded, in matters whatsoever in all courts of law and equity in this Territory, and may have a common seal, which may be altered at pleasure.

SEC. 2. That the said company shall have the exclusive privilege, for the time mentioned in the previous section, to construct, erect and maintain two bridges over the stream or streams of water designated in section four, and shall complete them as follows: the ferries in nine months and the bridges within eighteen months from the passage of this act, and if not, this charter shall become forfeited.

SEC. 3. That said company shall have the power to make, and afterwards to alter, all needed rules and regulations for the government of said company or the management of said bridges or ferries, or either of them, to be constructed by said company, not conflicting with the laws of this Territory.

SEC. 4. The said company shall have the power, for the time prescribed in this charter, to collect toll as hereinafter mentioned, from all persons travelling upon or over either of the bridges to be erected or built by them, or ferries to be established over the stream of water known as the Big Hole, at a point between the mouth of said river and two miles above the mouth of said river, and upon and over the Jefferson river, at a point about fifteen miles below the mouth of the Big Hole river, with wagons, vehicles of every sort, with horses, mules, asses, cattle, hogs and sheep. Any person who shall refuse to pay toll as required by this act, shall forfeit and pay the sum of ten dollars for each refusal, to be recovered by an action at law by said corporation.

SEC. 5. That the said company may erect and maintain a toll gate upon each bridge or ferry, at which toll gate there may be collected for said bridges and ferrier the following toll, and no more, to wit: At the Big Hole crossing for each wagon with two animals, four dollars; each additional animal fifty cents each; animal ridden, one dollar and cents each; each pack animal, one dollar; each footman, fifty cents; sheep and hogs each twenty cents; each loose animal, fifty cents. At the Jefferson crossing for each wagon with two animals, five dollars; each additional animal, fifty cents; each loose animal, fifty cents; each man on horse, mule or ass, one

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dollar and fifty cents; each pack animal, one dollar and fifty cents; each footman fifty cents; sheep and hogs each twenty cents.

SEC. 6. No person or corporation shall be allowed to construct or build any bridge to the damage of the corporatoas mentioned in this act within three miles of said bridge, or either of them, on either side thereof. But this act shall not be so construed as to prevent any farmer or ranchman from constructing a bridge for his own convenience, but any person constructing any such private bridge shall not collect toll.

SEC. 7. No section nor part of this act shall be so construed as to prohibit the county commissioners from exercising the same authority over said bridges or ferries as they are authorized to exercise over other licensed bridges and ferries, and they may, after the expiration of two years from the passage of this act, upon the petition of fifty bona fide citizens of the county in which said bridges or ferries are located, alter and fix the rates of toll. Nothing in this act shall be so construed as to interfere with the prior rights of any other person or persons, corporation or corporations.

SEC. 8. This shall take effect and be in force from and after its passage.

AN ACT to secure to Thomas D. Pitt certain privileges.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Thomas D. Pitt is hereby authorized to use as his brand or mark, the number eighty-four, and shall have the exclusive privilege of using such brand or mark on all his property, horses, mules, cattle, hogs, sheep, and all personal property of every description or species; and all other persons than the said Thomas D. Pitt, are hereby forbidden to use such brand or mark as a descriptive mark of his or her property.

SEC. 2. This act shall be in force from and after its passage.

[Approved January 28, 1865.]

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AN ACT to incorporate the Willow Creek Town Csmpany.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That John Slack, H. M. Cone, E. B. Johnson, William Chumasero, N. P. Langford, and their associates and successors, are hereby created a body politic and corporate, by the name and style of the "Willow Creek Town Company," and by that name may sue and be sued, plead and be impleaded in all courts of law and equity; may have a common seal which they may use and alter at pleasure, and may make such rules and regulations, and appoint such officers for the management of its affairs, as said company may deem necessary.

SEC. 2. Said company shall have power to manage and control the following tract of land, viz: Commencing at a stake set at the southeast corner of H. M. Cone's farm, on Willow Creek, in Missoula County, running thence east three hundred and twenty rods; thence north three hundred and twenty rods; thence west three hundred and twenty rods; thence south to the place of beginning, which they may lay off into lots, blocks or squares for the town of Willow Creek, and to sell, improve and convey the lots, or any property, or any part of said tract.

SEC. 3. Said company shall have the power to make additions to said town as they may deem consistent, not intruding or infringing on the rights or prior possession of any occupant.

SEC. 4. Said company shall have the right to convey the water of Gurd's Creek and Willow Creek from some feasible point on the above tract, into, upon and through the same for the use of the inhabitants thereof, but no charge shall be made for the use of said water.

SEC. 5. This act shall take effect and be in force from and after its passage.

[Approved January 28, 1865.]

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AN ACT to incorporate the Ashland Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That for the purpose of developing the gold, silver, and other mineral resources of the country, and encouraging the prospecting and mining interests of the Territory of Montana, William Y. Lovell, Miles Bullard, John E. Horning, William Johnson, A. B. Noteweir, Isaac N. Fields of Virginia City, and John S. White, H. S. McOsken, and John Smith, of Silver Bow, Deer Lodge county, all of this Territory, and such persons as may hereafter become associated with them, be, and they are hereby, constituted a body politic and corporate, by the name and style of the Ashland Gold and Silver Mining Company, for the term of twenty-five years, and by and under such corporate name may make contracts and be contracted with, sue and be sued, plead and be impleaded, in all courts of law or equity in this Territory, and may have and use a common seal, and alter the same at pleasure.

SEC. 2. Any five of the corporators named in this act may proceed to open books for the subscription to the capital stock of said company, after giving ten days notice thereof by posting three written or printed notices of the time and place of the same in three public places in the city of Virginia, in this Territory. When the amount of stock subscribed shall be ten thousand dollars they may proceed to organize under this act; and there shall be elected from the stockholders of said corporation five directors, who may serve for one year, or until their successors are elected; and from said directors there shall be elected a president, and also there shall be elected a secretary and treasurer, which may be united in one person if necessary.

SEC. 3. The capital stock of said company shall be fifty thousand dollars, with the right and power to be increased from time to time to one million dollars, to be represented by certificates of stock in sums of fifty dollars for each share paid in. Said stock shall be deemed personal property, and transferable by endorsement or on the books of said company. The said company shall have power to

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establish an office in the city of Virginia, in this Territory, and in the cities of New York and San Francisco for the transaction of their business if deemed necessary. The stockholders shall be liable only to the amount of stock severally held by them in said company.

SEC. 4. The board of directors of said corporation may pass such by-laws, rules, and regulations for their government as they may deem expedient, not inconsistent with the laws of the United States or the laws of this Territory, and may alter or amend the same at any regular meeting of the board of directors.

SEC. 5. The said Ashland Gold and Silver Mining Company may prospect for, and shall have power in the name of said corporation to pre-empt lode or lead claims of whatever kind, nature, or description, not exceeding the number now limited, or may hereafter be limited by law, which said lode or lead claims shall be the joint property of the several stockholders of said corporation, with the power to acquire and hold by purchase or otherwise any lode or lead claims, real estate, and other property of whatever description for the purpose of carrying on the business of mining, crushing, smelting, or otherwise extracting or separating minerals of whatever sort, kind, or description from the ore, quartz, or rock, or formation of any kind, either by water power or steam power, and for the purpose of mining may make or construct railroads, drive tunnels, sink shafts, and all other matters and things necessary and requisite to be done for mining either by arastras, furnaces, or quarts mills, with the necessary machinery belonging or attached thereto.

SEC. 6. The said company is authorized to sell, convey, or dispose of any of their property in the manner they may prescribe by the by-laws, rules, and regulations they may make for their government, a copy of said by-laws, rules, or regulations being signed by the president of said board and certified to by the secretary of said corporation and recorded in the office of the recorder of deeds of the county in which said real estate, lode or lead claim or claims, or other property, may be located.

SEC. 7. This act to take effect and be in force from and after its passage.

[Approved January 31, 1865.]

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AN ACT to incorporate the Rams Horn Toll Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That John E. Ryan, Thomas Geyarmon, Abe Riddle, their associates and successors, are hereby constituted a body politic and corporate, under the name and style of the Rams Horn Toll Road Company, and by such name may sue and be sued, plead and be impleaded, in any of the courts of law and equity in this Territory.

SEC. 2. The said company shall have full and ample power to open and build a toll road from the saw mill on Rams Horn Gulch to the ranche known as the Daly Ranche on the Stinkingwater River, said road to follow down the line of said Rams Horn stream to the mouth of the canon thereof.

SEC. 3. Said company shall have the exclusive right to open and maintain a toll road between the points heretofore mentioned within the space of two miles on each side of the road they may build for the term of ten years.

SEC. 4. Said company shall be required to open said road within eighteen months after the passage of this act.

SEC. 5. When said road is made practicable for wagons and teams to pass, the said company shall have the right to levy and collect toll on each wagon and each herd of stock as follows, to wit: For each wagon and team of two horses, or one yoke of cattle, one dollar; for each wagon and team of four head of mules, horses, or cattle, two dollars; for each wagon and team of six head of mules, horses, or cattle, three dollars; for each additional yoke of cattle, fifty cents; man and horse, twenty-five cents; each head of loose stock, twenty cents; and in the event of any parties passing over said road and refusing to pay legal tolls thereon, said company, or their agent, shall have the power to detain the wagons or stock or both on which toll has been refused until the same has been fully paid.

SEC. 6. The capital stock of said company shall be ten thousand dollars, divided into shares of one hundred dollars each.

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SEC. 7. Said company shall enjoy the rights and privileges above granted for a term or period of ten years from the passage of this act.

SEC. 8. This act to take effect and be in force from and after its approval by the governor.

[Approved February 1, 1865.]

AN ACT to incorporate the Historical Society of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That in order to collect and arrange facts in regard to the early history of this Territory, the discovery of its mines, incidents of the fur trade, &c., &c., H. L. Hosmer, C. P. Higgins, John Owens, James Stewart, W. F. Sanders, Malcolm Clark, F. M. Thompson, William Graham, Granville Stewart, W. W. De Lacy, C. E. Irwin, and Charles S. Bagg, their associates and successors, are hereby made and constituted a body politic, under the name and style of the Historical Society of Montana.

SEC. 2. Said corporation may have and use a common seal, and alter the same at pleasure, shall have power in its corporate name to sue and be sued, to contract and be contracted with, plead and be impleaded, in any of the courts of law and equity in this Territory, and own such real estate as may be necessary for the transaction of their business.

SEC. 3. The persons herein named, or a majority of them, shall meet at such time and place as may be designated by a call signed by at least three of the persons named in this act, to be published in some newspaper in this Territory, and choose a president, secretary, treasurer, historian, and a board of five trustees, which officers shall continue in office one year, or until others are chosen in their places.

SEC. 4. The board of directors, or a quorum thereof, shall have power to form such by-laws and ordinances as shall from time to time seem to them needful and proper, and to alter and amend the

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same at their pleasure in accordance with the Constitution of the United States and the laws of this Territory.

SEC. 5. This act shall take effect and be in force from and after its passage.

[Approved February 2, 1865.]

AN ACT to authorize John S. Lott and M. H. Lott to use the water of Wisconsin Gulch for Irrigating and Milling purposes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That John S. Lott and M. H. Lott, their heirs and assigns, be, and they are hereby, authorized to use the waters of Wisconsin Gulch for the purposes of irrigation and milling, commencing at a point one mile above its confluence with the Beaver Head River in Montana Territory.

SEC. 2. That they shall have all the rights and privileges necessary, either by dam or ditch, to divert and use the waters above mentioned from said Wisconsin Gulch, taking the same over any lands necessary, with the right of way through the same, commencing at a point one mile above on said stream, thence down to its mouth or confluence with the Beaver Head River.

SEC. 3. That in case John S. Lott and M. H. Lott neglect to use said water as specified for the space of one year the right and privileges hereby granted shall be forfeited.

SEC. 4. This act to take effect and be in force from and after its passage.

[Approved February 2, 1865.]

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AN ACT to incorporate the Yellow Stone Anthracite and Bituminous Coal Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Wm. G. Hollins, Wm. M. Bowers, E. H. Kimball, John B. Green, Daniel Williams, Daniel Lanigan, A. S. Potter, Wm. Chumasero and Chas. S. Bagg, and their associates, successors and assigns, be and they are hereby created a body politic and corporate under the name and style of the Yellow Stone Anthracite and Bituminous Coal Company, and by that name may sue and be sued, plead and be impleaded, in all courts of this Territory, and shall have perpetual succession and use a common seal, which may be altered at pleasure by said company; said company shall be called the Yellow Stone Anthracite and Bituminous Coal Company; and in their corporate name may purchase, use, hold and convey property real, personal and mixed; may make all necessary contracts and may locate and hold as their own property, subject to the laws of congress, fourteen hundred and forty acres of land, being one hundred and sixty acres for each corporator of said company, which amount may be at any time hereafter increased by pre-emption, purchase or otherwise; such pre-emption, when made, shall be recorded in the recorder's office of the county in which such land is located.

SEC. 2. Said company may make all contracts necessary with rules and by-laws for carrying on the business of the company and do all other acts and things necessary or expedient to that end.

SEC. 3. The land located by said company shall be on the Yellow Stone river, at or near the Red Streak Mountains, between the second or third canons, about twenty-five miles above Yellow Stone City, or Emigrant Gulch.

SEC. 4. The capital stock of said company shall be three hundred thousand dollars, which may be divided into shares of one hundred dollars each, and which shall be transferable on the books of said company, in such manner as shall be ordained by the by-laws of said company.

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SEC. 5. The said company shall have all the rights and privileges necessarily possessed by incorporations of the same character, and shall have the right to build any wagon or railroad from their said coal mining lands to any place they may deem necessary for the purposes of their business.

SEC. 6. There shall be an annual meeting of the stockholders, held at such place and at such time as shall be designated by the by-laws, at which time there shall be elected a board of five directors, who shall hold their offices until their successors shall be elected and qualified. At such meeting each share of stock shall be entitled to one vote, which may be cast by proxy, in writing, and at any meeting of the stockholders such business may be transacted as may be necessary; said stockholders may at any time alter and amend any rules or by-laws not inconsistent with public law.

SEC. 7. The first officers of the company shall be chosen by the incorporators above named, and said directors when chosen shall have power to elect one of their number president, and also to elect a secretary and treasurer, who shall hold their offices until their successors are elected and qualified.

SEC. 8. The directors shall have power to appoint such officers, agents, and servants as may be necessary to carry on their business, and fix their compensation.

SEC. 9. At least twenty days notice of any meeting of the stockholders shall be given by advertisement in some newspaper of general circulation in this Territory, and no person shall be a director of said company after ceasing to be a stockholder, and vacancies in the board of directors may be filled by the remaining directors.

SEC. 10. The stockholders shall severally be liable only to the amount of stock held by them.

SEC. 11. For the purpose of raising funds from time to time for the more effectual transaction of their business, the company may issue their notes or bonds in such sum or sums as may be necessary, not to exceed at any time their authorized capital, at rates of interest as may be agreed upon, and payable at such time or times and place or places as they may designate, and may secure the payment of such note or notes, bond or bonds, by mortgage of their property or franchises, to be created for and executed by said company, and may make such bonds convertible into stocks of said company.

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SEC. 12. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 2, 1865.]

AN ACT to incorporate the Deer Lodge Valley Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That James C. Brown, A. F. Graeter, William L. McMath, Stebbins Shepard, E. P. Lewis and John B. Lane, their associates, successors and assigns, be and they are hereby incorporated as a body corporate and politic, to continue for the term of fifteen years, by the name and style of Deer Lodge Valley Mining Company, and by that name and style shall be capable of making contracts, of suing and being sued, impleading and being impleaded in all matters whatever, in all courts of law or equity in this Territory, and may have and use a common seal, which may be altered at pleasure, and that they may be capable in law of acquiring and conveying property, both personal, real and mixed, and shall have and hold peaceable possession of any mining claim or claims, of whatever nature or description they may acquire under the provisions of this act, subject to the laws of the United States and the laws of this Territory.

SEC. 2. This corporation shall have power to make contracts of all kinds and to establish by-laws, rules and regulations for the government of the corporation, not inconsistent with the Constitution of the United States and the laws of this Territory, and may alter or amend the same when deemed expedient.

SEC. 3. Said company shall own and be entitled to all gold or silver lodes, leads or ledges, or other mineral which they may discover, excavate or purchase, so as not to interfere with any prior right to any lode or claims previously owned or possessed by any other person or persons or company, not conflicting with the laws of this Territory.

SEC. 4. The capital stock of said company shall be two hundred thousand dollars, which may be increased from time to time,

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to a sum not exceeding the sum of two millions of dollars, to be represented by certificates in sums of one hundred dollars for each share paid in. Said stock shall be deemed personal property, and transferable by endorsement, or on the books of said company. The said company shall have power to establish an office at Silver Bow City in this Territory, and also an office in the city of New York, if deemed proper. The stockholders shall be liable only to the amount of stock severally held by them in said company.

SEC. 5. Any three of the corporators named in this act, may proceed to open books for the subscription to the capital stock of said company, after giving twenty days notice thereof by publication in some newspaper published in this Territory, and if there is no newspaper published in this Territory, then by giving twenty days notice of the time and place, by posting three written or printed notices of the same in three public places in Silver Bow City in this Territory. When an amount of stock is subscribed of fifty thousand dollars, they may proceed to organize under this act, and there shall be elected from the stockholders of said corporation five directors, who may serve for one year, or for such time as may be prescribed in the by-laws of said company, and from the said directors a president for said company shall be chosen, and also there shall be chosen from the directors or stockholders a secretary and treasurer, who shall serve for such time as may be designated in the by-laws of said company. But nothing in this act shall be so construed as to prevent one person from holding both of said offices, if deemed advisable.

SEC. 6. The said corporation is hereby authorized to sell, convey, or otherwise dispose of any of their property, real, personal or mixed, or claims of whatever description, in the manner that may be prescribed in the by-laws, rules or regulations, being signed by the president of the board of this corporation, and attested to by the secretary of said corporation, and recorded in the office of the recorder of deeds of the county in which said property, claim or claims may be located.

SEC. 7. This act to take effect and be in force from and after its passage.

[Approved February 2, 1865.]

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AN ACT to incorporate the Prickly Pear, Deer Lodge and Silver Bow Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That F. H. Angevine, M. A. Moore, John A. Johnston and James R. Molone, are hereby created a body corporate and politic with the ordainary powers and liabilities of such incorporations, to be known as the Prickly Pear Deer Lodge and Silver Bow Wagon Road Company, and by that name and style may sue and be sued, plead and be impleaded, in all courts of law or equity in this Territory, may have and use a common seal and do all acts necessary for the transaction of their corporate business.

SEC. 2. Said company shall have the right and exclusive privilege of building and constructing a wagon road, commencing at the crossing of the Boulder creek in Jefferson county, Montana Territory, at or near Walls Ranche, thence up the said creek on the most practicable route on either side of said Boulder creek to a point opposite the head of a tributary of what is known as the Cottonwood creek in Deer Lodge Valley, then to cross the divide, with one branch of said road on to the head waters of said Cottonwood creek, thence down said stream to Cottonwood Town; the other branch of said road to continue up the said Boulder creek to the head waters thereof, thence across the divide on to the head waters of the Silver Bow creek, thence down said stream to Silver Bow Town.

SEC. 3. Said company shall be allowed the term of one year and a half from the date of the passage of this charter in which to construct and complete said road, and shall enjoy the rights and privileges herein granted for the term and period of ten years from the date of the passage of this act.

SEC. 4. Said company shall at all times keep and maintain said road in a state of good repair and condition for travel.

SEC. 5. Said company shall have the right and exclusive privilege of erecting and maintaining a toll gate at the junction of the branches of said road at which they may take and collect the fol-

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lowing rates of toll: For each wagon drawn by one span or yoke of animals, fifty cents; for each horseman fifty cents; for all loose stock per head twenty-five cents. But at any time after two years from the date of the construction of said road the county commissioners in the county through which said road runs, may upon the petition and request of fifty citizens of this Territory, establish such rates of toll for said road as to them may seem right and just.

SEC. 6. If at any time said road should become impaired or unsafe for all kinds of travel, said company shall suspend the taking or collecting of toll until said road shall be put in a good, safe and proper condition for travel.

SEC. 7. This act shall take effect and be in force from and after its approval by the governor.

[Approved Febraary 2, 1865.]

AN ACT to incorporate the Alki Town Company

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That L. R. Maillet, H. A. Milot, T. L. Hains and others, who are or may be associated with them and their successors, heirs and assigns, are hereby incorporated a body politic and corporate, by the name and style of the Alki Town Company, and by that name shall be capable of suing and being sued, impleading and being impleaded, defending and being defended in all courts of law and equity in this Territory, having jurisdiction in such cases. Said company is authorized to have and use a common seal, to alter the same at pleasure, and to make such rules and regulations not incompatible with the laws of the United States or any of the acts of the Legislative Assembly of this Territory, and may appoint such officers for the management of its affairs as the company deem necessary.

SEC. 2. The said corporation shall have power to hold, manage and control three hundred and twenty acres of land now owned and occupied by them at or near where the Virginia City and Deer

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Lodge Road crosses the Little Deer Lodge Creek, and to sell and improve or convey the lots or any property or any part of said tract of land.

SEC. 3. The said company shall have power to make additions to the said town tract as they may deem consistent, not intruding or infringing on the rights or possessions of any other person or persons.

SEC. 4. This act to take effect and be in force from and after its passage.

[Approved February 2, 1865.]

AN ACT to incorporate the Eureka Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Samuel McLean, Walter C. Hopkins, Gabriel Morris, George Brown, William H. Miller, Ashael K. Eaton and William Beeken, their successors, associates and assigns, be, and they are hereby constituted a body politic and corporate, under the name and style of the Eureka Gold and Silver Mining Company, for the term of ten years; and by and under such corporate name may make contracts and be contracted with, plead and be impleaded with, in all courts of law and equity in this Territory, and may have and use a common seal and alter the same at pleasure.

SEC. 2. Any five of the corporators named in this act may proceed to open books for the subscription to the capital stock of said company in the city of Virginia, Montana Territory, and also in the city of New York, by giving three weeks notice of the time and place of the same, in two newspapers, one of which shall be published in the city of Virginia, and the other in the city of New York. When an amount of stock is subscribed of twenty thousand dollars, they may proceed to organize under this act; and there shall be elected from the stockholders of said corporation, five directors, who may serve for one year, or until their successors are elected; and from the said directors, there shall be chosen a president, and also, there shall be elected, a secretary and treasurer;

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but the offices of secretary and treasurer may be united in one person if deemed necessary.

SEC. 3. The capital stock of said company shall be fifty thousand dollars, which may be increased from time to time to a sum not exceeding one million dollars, to be represented by certificates in sums of fifty dollars for each share paid in Said stock shall be deemed personal property, and transferable by endorsement, or on the books of said company. The said company shall have power to establish an office in the town of Montana, Beaver Head County, Montana Territory, and in the city of New York, for the transaction of their business, if deemed necessary; and the stockholders shall be liable only to the amount of stock, severally held by them, in said company.

SEC. 4. The board of directors of said incorporation may pass such by-laws, rules and regulations for the government of said incorporation as they may deem expedient, not inconsistent with the laws of the United States or of this Territory, and may alter and amend the same at any regular meeting of said board.

SEC. 5. The said incorporation shall have the power to acquire by purchase, gift or grant, any lode, lead or ledge claims, of whatever kind, nature or description, and any other character of real estate or water claims or privileges, necessary and requisite for the operations of said company; which said lode, lead or ledge claims, real estate or water claims and privileges, shall be the joint property of the several stockholders, in proportion to the amount of stock severally held by them; and further, shall have the power of working and mining said lead, lode, or ledge claims, and of erecting machinery, mills, and furnaces for the crushing, smelting, or otherwise extracting or separating minerals of whatever kind or description, from the ore, quartz, or pyrites; and for the purpose of mining, may make or construct roads, drive tunnels, sink shafts, and do and perform any and all other matters and things requisite and necessary to be done for mining, either by arastras, furnaces, or quartz mills, with necessary machinery belonging and attached thereto.

SEC. 6. The said corporation is authorized to sell, convey, or dispose of any of their property in the manner they may prescribe by the by-laws, rules, and regulations they may make for their government, a copy of said by-laws, rules, and regulations being

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signed by the presicent of said board, and certified to by the secretary of said corporation, and recorded in the office of the recorder of deeds of the county in which such real estate, lead, lode, or ledge claims, or water claims and privileges may be situated or located.

SEC. 7. This act shall be in force from and after its passage and approval by the governor.

[Approved February 2, 1865.]

AN ACT to incorporate the Fort Benton and Kootenai Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That George B. Parker, A. J. Oliver, John A. Johnson, N. W. Burris, and E. P. Lewis are hereby created a body corporate and politic, to be known as the Fort Benton and Kootenai Wagon Road Company, and by that name may sue and be sued, plead and be impleaded, in all courts of law and equity in this Territory, and may have and use a corporate seal, which may be altered at pleasure.

SEC. 2. Said corporation shall have power to make all needful rules and regulations for the government of said company.

SEC. 3. Said company shall have power and the exclusive privilege to build, construct, and maintain a wagon road, which shall extend from Fort Benton, by the most direct route, to what is known as Marias Pass, thence through said pass to a point about thirty miles above the head of Flat Head Lake, then to intersect and form a junction with the Hell Gate aad Kootenai Wagon Road.

SEC. 4. The said company shall have two years in which to build and complete said wagon road, and after completed shall at all times keep and maintain said road in good repair for travel.

SEC. 5. Said company may erect and maintain a toll gate in said Marias Pass, at which they may take and collect the following rates of toll: For each wagon drawn by four animals or more, eight dollars; for each wagon drawn by less than four animals, five

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dollars; for pack animals and horsemen, one dollar each; for loose animals, horses, mules, &c., fifty cents.

SEC. 6. Said company shall enjoy the rights and privileges above granted for the term or period of ten years from the passage of this charter.

SEC. 7. The county commissioners of the county in which the tolls are taken on said road may, after the expiration of three years from and after the completion of said road, amend, correct, and alter the rates of toll on said road to such sums as may to them seem right and just, upon the petition of fifty citizens of this Territory.

SEC. 8. This act shall take effect from and after its passage by the legislature.

[Approved February 2, 1865.]

AN ACT to incorporate the Montana Iron Manufacturing Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Augustine G. Langford and his associates, be and are hereby constituted a body politic and corporate under the name and style of the Montana Iron Manufacturing Company.

SEC. 2. The capital stock of said company shall be fifty thousand dollars, which may be increased from time to time, as the stockholders may determine, and shall be divided into shares of one hundred dollars each, and shall be deemed personal property, and shall be transferable only on the books of the company in such manner as the by-laws shall prescribe.

SEC. 3. The said corporation shall, in their corporate capacity, be capable of suing and being sued, impleading and being impleaded, answering and being answered, and appearing and prosecuting to final judgment in all courts whatsoever. They may have and use a common seal, and alter the same at pleasure; elect all necessary officers, fix their compensation and define their duties; may ordain and establish by-laws for the regulation of their affairs, and alter

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and repeal the same, and employ all such agents, mechanics and laborers as they shall deem proper.

SEC. 4. The said corporation shall have the power to contract and be contracted with, to buy, sell and hold property, both real and personal, and may pre-empt, under the laws of Congress, and the Territory of Montana, such lands as they may require to carry on the business of this corporation. They shall have full power to make and execute under their corporate seal, bonds, and may secure the same by mortgage, upon their property and franchises, and may borrow money from time to time upon such bonds, or upon the notes of the corporation, at such rates of interest as may be agreed upon.

SEC. 5. The annual meeting of said corporation, and all regular and special meetings of the stockholders, and all elections of officers, may be held at such time and place as the by-laws may prescribe.

SEC. 6. The provisions of this act shall continue and be in force irrevocably for twenty years.

SEC. 7. This act shall be in force from and after the date of its approval by the governor.

[Approved February 2, 1865.]

AN ACT to incorporate the Gallatin Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That E. P. Lewis, G. W. Stapleton, B. B. Burchet, Samuel McLean, Edward House, Wm. Tounsley, Geo. Willerford, Albert Green, Philip Burton, James Bouton, Alfred Ray, N. W. Burris, M. R. Burris, Munroe Atkinson, Jerome S. Glick, Frank Watkins, Charles Davis, ——— Ash, George Lenny, Buzz Cavin, John Ault, and others, who are or may be associated with them, for that purpose, and their successors, are hereby incorporated a body politic and incorporate, by the name and style of the Gallatin Town Company, and by that name shall be capable of suing and being sued, impleading and being impleaded, defending and being

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defended, in all courts of law and equity in this Territory, having jurisdiction in such cases; said company is authorized to have and use a common seal, to alter the same at pleasure, and make such rules and regulations not incompatible with the laws of the United States, the organic act of Montana Territory, or any acts of the Legislative Assembly of this Territory, and appoint or elect such officers as the company may deem necessary.

SEC 2. That the said corporation shall have power to hold, manage and control the lands of Gallatin Town, as platted and recorded in the claim club records of Gallatin county, by the said corporation, E. P. Lewis, B. B. Burchet, Samuel McLean, and others, now owned and occupied by them as said Gallatin Town, and to convey lots or any property of part of said tract, as they may see fit and proper.

SEC. 3. They shall have the power to make additions to the said town tract mentioned as they may deem consistent, and not infringing on the rights of any other person or persons.

SEC. 4. This shall take effect and be in force from and after its passage.

[Approved February 2, 1865.]

AN ACT to incorporate the Bears Teeth Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That C. F. Clark, Jo. Davidson, John Tipley, John A. Johnson, George W. Stapleton, their associates and successors, are hereby constituted and declared a body politic and corporate under the name and style of the Bears Teeth Wagon Road Company, and by that name may sue and be sued, plead and be impleaded, and have common seal, make by-laws for the regulation and government of said company, which seal and by-laws may be altered and changed at pleasure.

SEC. 2. That said incorporation is hereby authorized to establish and maintain a toll road commencing at the confluence of th Prickly Pear and Ten Mile creeks in the Prickly Pear valley, run

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ning thence northeasterly to the Bears Teeth mountain, thence down the Missouri, forming a junction with the government road at a point about ten miles south from the Dearbourne river.

SEC. 3. Said corporation shall have the exclusive privilege for the term of ten years to construct and maintain a toll road on the route designated, and to erect one toll gate thereon, and to collect tolls at the following rates: For each wagon and one span of horses, mules or oxen, one dollar; for each horseman, fifty cents; for each head of loose stock, twenty-five cents: *Provided*, That the county commissioners of the county or counties through which or in which said road is located, may at any time after the expiration of two years from the completion of said road, fix the rates of toll on said road.

SEC. 4 Said corporation shall keep the said road in good repair from and after the commencent of the collection of tolls upon the same.

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved February 2, 1865.]

AN ACT to incorporate the Marias Ferry Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Walter M. Barnum, F. W. Moore, and C. F. Clark, are hereby created a body corporate and politic to be known as the Marias Ferry Company, with the ordinary powers and liabilities of such corporations, and may sue and be sued, plead and be impleaded, in all courts of law in this Territory, and may do all acts necessary for the proper transaction of their corporate business.

SEC 2. Said company shall have the exclusive right and privilege of building, constructing and running a ferry boat across the Missouri river, at or near the mouth of the Marias river, or at any point within three miles of the junction of the said Marias river with the Missouri river, and for this purpose shall have the right to make and construct necessary roads or causeways on each side of

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said Missouri river for the purpose of allowing the passage of wagons, teams, &c., to and from said ferry boat.

SEC. 3. Said company shall keep and maintain a good and safe ferry boat at said point and may take and collect for each wagon drawn by two head of stock, four dollars, and for each additional span of animals, one dollar; for each horseman, one dollar; for all kinds of loose stock per head, fifty cents.

SEC. 4. Said company shall have the term of one year in which to build and construct said ferry boat, and shall enjoy the rights and privileges herein granted for the space or term of ten years.

SEC. 5. At any time after four years after the passage of this act the county commissioners of the county in which said ferry is located may, upon the request and petition of fifty citizens of this Territory, alter the above rates of toll and establish such rates as they may think right and just.

SEC. 6. This act shall take effect and be in force from and after its passage.

[Approved February 2, 1865.]

AN ACT to incorporate the Ophir Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Franklin More, Moses Clark, N. W. Burris, E. P. Lewis, Capt. F. Davidson, James H. Kiskadden, Geo B. Parker, George Hill, and others, who may be associated with them for that purpose, and their successors, are hereby constituted a body politic and corporate, by the name and style of the Ophir Town Company, and by that name may sue and be sued, plead and be impleaded, in all the courts of law and equity in this Territory having jurisdiction in such cases. Said company is authorized to have and use a common seal, and to alter the same at pleasure, and to make such rules and regulations for their government, not incompatible with the laws of the United States, the Organic Act of Montana Territory, or any act of the Legislative Assembly of said Territory, and to appoint or elect such officers and agents for the

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management of the business of said company as the stockholders may deem necessary

SEC. 2. That the said company shall have power to hold, manage and control the land now owned by them as hereinafter described, to wit:—Commencing at the mouth of the Maria's River, or junction of said river with the Missouri River; thence running up and along the south bank of said Maria's River, to the mouth of the Teton River; thence south six hundred yards; thence east to the Missouri river; thence down the bank of said river to the place of beginning, the same containing three hundred and twenty acres more or less; said company shall have power to survey and erect said tract of land into a town site, to be known as Ophir, and to sell or dispose of for the benefit of said company any portion thereof, and in such manner as they may deem expedient.

SEC. 3. This act to take effect and be in force from and after its passage and approval by the governor.

[Approved February 2, 1865.]

AN ACT to incorporate the Big Hole River Bridge Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That F. H. Burr, James M. Minesurger and their legal associates, successors and assigns, are hereby constituted and created a body politic and corporate under the name and style of the Big Hole River Bridge Company, and under that name are capable of suing and being sued, impleading and being impleaded, in all courts of law and equity, having a competent jurisdiction in such cases, in the Territory.

SEC. 2. Said company are hereby authorized to maintain and have the bridge across Big Hole River, that was built by said company during the winter of 1862 and 1863, at a point where the road from Bannack City to Deer Lodge Valley crosses said river, and to collect toll for crossing said bridge as follows:—For each wagon or vehicle drawn by two horses, mules or oxen, one dollar and fifty cents; for each additional pair of horses, mules or oxen,

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fifty cents; for each man and horse or mule, fifty cents; for each animal packed, fifty cents; for each head of loose cattle, horses, mules and asses, twenty-five cents; for each head of sheep or hogs, ten cents.

SEC. 3. Said company is hereby authorized to maintain and have said bridge for ten years, and shall keep said bridge in good order for the use and passage of wagons for that length of time; *Provided*, That nothing in this act shall be so construed as to prevent the county commissioners from regulating the rates of toll across said bridge from two years after the passage of this act, upon petition of thirty residents of the county in which said bridge is located.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

[Approved February 2, 1865.]

AN ACT to provide for the compensation of B. B. Burchett, for services rendered the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be, and is hereby appropriated out of the territorial treasury, the sum of one hundred and eight dollars, to be paid to B. B. Burchet for services rendered as judge of miner's court, in and for the district of Bannack, in the Territory of Montana, in the trial of one Peter Horen, who was tried and convicted at Bannack City on the 24th day of August, A. D. 1863, for the murder of John Kelley.

SEC. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer for the sum named in the first section of this act, in favor of B. B. Burchet, which shall be paid out of any money in the treasury not otherwise appropriated

SEC. 3. This act shall take effect and be in force from and after its approval by the governor.

[Approved February 6, 1865.]

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AN ACT to incorporate the Eureka Coal Mining and Manufacturing Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That A. Young, A. T. Axe, James R. Molone, and their associates, are hereby incorporated a body politic, under the name and style of the Eureka Coal Mining and Manufacturing Company, the capital stock of which is one thousand dollars, which may be increased from time to time until it reaches a sum not to exceed five hundred thousand dollars, to be divided into shares of one hundred dollars each, and by the name aforesaid shall have continued succession, may sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity in the Territory, and may make and use a common seal, and alter the same at pleasure, and shall be able in law and equity to make contracts, to take, hold, and possess, use and enjoy the fee simple, or other title in real and personal property, as may be necessary to prosecute the business of their association, and may sell and dispose of the same as they may see fit; may make and execute by-laws, rules, and regulations proper and needful for carrying into effect the provisions of this act, not inconsistent with public law, for the accomplishment of its objects, which are hereby declared to be the discovery, acquisition, and working of coal beds or mines, fire-clay or porcelain-clay beds, and oil springs.

SEC. 2. The said corporation shall have the right and power to use all the water power and privilege necessary or needful for their mining and manufacturing purposes, to build dams, erect machinery, and run ditches whenever and wherever the same does not interfere with prior rights of other parties, also to build such railroads and wagon roads as may be necessary to bring said coal or manufactured articles to market, and the right of way for such purpose is hereby granted to said incorporation, not to infringe upon prior rights.

SEC. 3. A majority of the abovenamed incorporators shall constitute the first board of directors under this act, and they shall hold their offices until their successors are elected and qualified.

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They shall meet at such time and place as may be designated by a majority thereof. The said directors shall at their first meeting elect one of their number as president of said company, and said directors shall conduct and manage the affairs of said company.

SEC. 4. The annual meeting of the stockholders of said company shall be held on the first Monday of May of each year. The said stockholders at such meeting shall have power to make, alter, and amend, or repeal, by a majority of votes given, any or all such by-laws, rules, orders, or regulations, and do and perform any other act authorized by this act.

SEC. 5. The directors shall appoint such officers, agents, and servants as may be necessary, and fix their salaries, shall keep a journal of their proceedings, shall cause correct books and accounts to be kept, determine by their by-laws what number of directors shall constitute a quorum for the transaction of business, and appoint to and fill all vacancies that may occur in any office created by the said company.

SEC. 6. For the purpose of raising funds from time to time for the more effectual establishment and operation of the business of the said company, the company may issue their bonds in such sums as they may deem proper, not to exceed at any time their authorized capital, at rates of interest not exceeding fifteen per cent. per annum, payable semi-annually, and the principal of said bonds payable at such time and place as they may designate, and may secure the payment of said bonds by mortgage on their property, and franchises to be executed by said company, and may make such bonds convertible into stock of said company.

SEC. 7. When said company, either by themselves or their agents, shall discover a coal or clay bed or vein, they shall file a certificate of the same in the recorder's office of the county where such discovery may be made or located, and the said company, by its incorporate name, shall be entitled to take up, locate, or pre-empt, six hundred and forty acres of land on which said coal or clay bed shall be situated: *Provided*, That nothing in this act shall be so construed as to enable the corporators to pre-empt more than one hundred and sixty acres of land to each corporator named in this act.

SEC. 8. That any person or persons who shall interfere with, or who shall wantonly or maliciously injure any of the said com-

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pany's works, improvements or appurtenances thereunto belonging, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or be imprisoned not to exceed six months, or by both such fine and imprisonment, at the discretion of the court.

SEC. 9. All transfers of stock shall only be valid when transferred in accordance with the by-laws of said company.

SEC. 10. This act to take effect and be in force from and after its passage.

[Approved February 6, 1865.]

AN ACT to incorporate the Silver Bow Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana :

SEC. 1. That R. Anderson, F. Ruff, R H. Cogswell, J. Nelson, J. H. Brown, Joseph Clark, R. N Hill, C. E. Irwin, E. P. Lewis, Granville Stewart, and their associates, successors and assigns, are hereby constituted a body politic and corporate, by the name and style of the Silver Bow Town Company, and by that that name may sue and be sued, plead and be impleaded, in all courts of law and equity in this Territory having jurisdiction in such cases. Said company is authorized to have and use a common seal and to alter the same at pleasure, and to make rules and regulations for their government, not incompatible with the laws of the United States or of this Territory, and to appoint or elect such officers and agents for the transaction and management of the business of said company as the stockholders may deem necessary.

SEC. 2. The said company shall have power to hold, manage and control the land now owned and occupied by them as hereinafter described, to wit: beginning at a point four hundred and forty yards east of Deer Lodge Creek, thence running west eight hundred and eighty yards, thence north seventeen hundred and sixty yards, thence east eight hundred and eighty yards, thence south seventeen hundred and sixty yards, to point of beginning;

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being three hundred and twenty acres of land; and may cause the same to be surveyed and erected into a town, to be known as the town of Silver Bow, and may sell and transfer any portion thereof for the use and benefit of said company, in such manner and on such terms as the stockholders may think proper.

SEC. 3. That said company shall have power to make additions to the present town tract as they may deem consistent, not intruding or infringing on the rights or prior possessions of any other occupant.

[Approved February 6, 1865.]

AN ACT to change the name of Montana City in Jefferson County, and to incorporate the town of Prickly Pear.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the name of the town of Montana City, in the county of Jefferson, is hereby changed to that of Prickly Pear.

SEC. 2. That the boundaries of Prickly Pear shall be as follows:—Commencing at the northwest corner of mining claim number five, in the lower Prickly Pear district; thence up the Prickly Pear creek, one mile; thence west from said creek, one half mile; thence north one mile; thence east one half mile to the place of beginning, containing three hundred and twenty acres.

SEC. 3. That James Gurly, H. M. Hill, A. H. Moulton, C. G. Hallback, T. G. Merrill, A. Ackeman, and their associates and successors, be and are hereby constituted a body politic, under the name and style of the Prickly Pear Town Company, with the ordinary powers and liabilities of corporations; namely, to make and use a corporate seal, to sue and be sued, plead and be impleaded, to elect officers for the government of said town company, and for the transaction of such business as may legally come before said town company.

SEC. 4. That James Gurly is hereby appointed president, H. M. Hill, secretary, A. H. Moulton, treasurer, and C. G. Hallback, T. G. Merrill and A. Ackeman, trustees of said town company, to

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hold their offices until the first Monday of March, 1865, and until their successors are elected.

SEC. 5. That on the first Monday of March, in each year, there shall be an election of officers of said town company, who shall hold their offices for one year, unless removed by a majority of said company. The officers of said town company shall consist of a president, secretary, treasurer, and three trustees, whose duties shall be such as usually devolve upon such officers.

SEC. 6. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 6, 1865.]

AN ACT to incorporate the Helena Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That W. C. Gillett and Joseph Drago, their associates and assigns, are hereby created a body corporate and politic, with the ordinary powers and liabilities of such incorporations, to be known as the Helena Wagon Road Company, and by that name and style may sue and be sued, plead and be impleaded, defend and be defended, in all the courts of law or equity in this Territory, may have and use a common seal and alter the same at pleasure, and do all acts necessary for the transaction of their corporate business.

SEC. 2. Said company shall have the exclusive privilege of building and constructing a wagon road, commencing at Helena in Edgerton county of this Territory, thence southerly on the most practicable route until it intersects with the Prickly Pear and Virginia City wagon road at or near Mahans and Cobbs ranche on said road.

SEC. 3. Said company shall be allowed the term of one year from and after the passage of this act in which to construct and complete said road, and shall enjoy the rights and privileges herein granted for the term and period of five years from and after the passage of this act.

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SEC. 4. Said company shall at all times keep and maintain said road in a state of good repair and condition for travel.

SEC. 5. Said company shall have the right and exclusive privilege of erecting and maintaining one toll gate on said road at or near the junction of the Prickly Pear and Virginia City road, at which they may take and collect the following rates of toll, to wit: For each wagon drawn by one span or yoke of animals, one dollar and fifty cents; for each additional span, fifty cents; for each horseman, twenty-five cents; for each pack animal, twenty-five cents; for all loose stock, twenty cents. But at any time after two years from the date of the completion of said road the county commissioners in the county which said toll gate is located may, upon the petition and request of fifty citizens of this Territory, establish such rates of toll for said road as to them may seem right and just.

SEC. 6. If at any time said road should become impaired or unsafe to travel, said company shall suspend the taking or collecting of toll until said road shall be put in a good, safe and proper condition for travel.

SEC. 7. That nothing in this act shall be so construed as to interfere with prior vested rights of any other person or persons or company.

SEC. 8. This act to take effect and be in force from and after its passage.

[Approved February 6, 1865.]

AN ACT to incorporate the Beaver Head Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That George Chrisman, John M. Galloway, William Babbitt, William H. Miller, Walter W. DeLacy, and Charles Ream of Beaver Head County, and Augustus F. Grater of Madison County, Montana Territory, their successors, heirs and assigns, be and are hereby incorporated as a company, under the name and style of the Beaver Head Ditch Company, by which name they may be capable of suing and being sued, pleading and being impleaded, in all courts of law and equity in this Territory.

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SEC. 2. That said company shall continue for the full term of fifteen years, from and after the passage of this act, and have the exclusive power and right to construct and operate a ditch for the conveyance of the water of Rattlesnake Creek, Beaver Head County, from a point at which they may build a dam, at or near the centre of what is known as the second canon. From such point and dam they shall have the privilege of taking said water by ditch or flume, down upon either or both sides of said creek to below the first canon. *Provided*, That the operations of said incorporation shall not interfere in any respect, with water claims already taken up on said creek, and recorded in the recorder's office of Beaver Head County.

SEC. 3. That said company may supply water for mining, milling and other purposes at such rate of charge as they may fix by their rules and regulations.

SEC. 4. The officers of said company shall consist of a president, secretary and superintendent, who jointly with any other the company may elect, shall constitute a board of directors, which board of directors, shall upon the first Monday of May of each year, meet at the office of the company or at some other place which may be made known by advertisement, and elect officers for the ensuing year. *Provided*, That if said board of directors fail to meet at such times for such purposes, the acting officers of the company shall continue to hold their respective offices till the next annual election.

SEC. 5. That said company shall have power to make such rules, regulations and by-laws, not inconsistent with the laws of this Territory and of the United States, as by them may be deemed needful and requisite for the management of the affairs of the company and the transfer of stocks

SEC. 6. The regular meetings of the company shall be held monthly.

SEC 7. The company shall have the right to purchase and hold real estate and mining claims, whenever two-thirds of all the stock of the company shall, by representation, vote for such purchase, at a regular meeting of the company. The company shall have a corporate seal which they may alter at pleasure.

SEC. 8. The capital stock of said company shall be thirty-five thousand dollars, which shall be divided into shares of such sums as

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the company may elect, and each share shall be entitled to one vote at all elections of the company. Said capital stock may be increased to any amount not exceeding one hundred thousand dollars, by a two-thirds vote of the stock at a regular meeting, which stock may be represented by any one holding a written proxy from the proper party or parties.

SEC. 9. That the said company shall commence the construction of said ditch or ditches, flume or flumes, before the first day of October, A. D. 1865, and complete the same within two years from and after the passage of this act.

SEC. 10. That the said company shall have the right of way for one rod upon each side of said ditch, ditches, flume or flumes, and any person who shall wantonly or maliciously interfere with or injure said company's ditch, ditches, flume or flumes, or appurtenances thereunto belonging, shall upon conviction, be punished by a fine of not more than five hundred dollars or imprisonment not more than six months

SEC. 11. This act to take effect and be in force from and after its passage.

[Approved February 6, 1865.]

AN ACT to incorporate the North Mill Creek Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That William Sterns, Josiah Spencer, William A. Dinger, and their associates and successors, be and are hereby constituted a body politic under the name and style of the North Mill Creek Ditch and Mining Company, with the ordinary powers and liabilities of corporations, namely: to sue and be sued, to plead and be impleaded, to elect officers for the government of the company and the transacting of the usual business, with a capital stock of fifteen thousand dollars.

SEC. 2. Said company shall have the power to take not to exceed eight hundred inches miners' measurement of the waters of North Mill Creek at a point on said creek about three-fourths of a

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mile above the junction of the two forks of said creek, and build a ditch and flumes of sufficient capacity to convey said water from from said point to the head of Bivins gulch, thence to Hainses gulch, and thence to such other mining districts as said water can be led and used to advantage: *Provided*, That there shall be at all times a sufficient amount of water left to run in said Mill creek for the reasonable use of the occupants upon said stream below the point where the water is taken out.

SEC. 3. That the above named company, with all the rights and privileges hereby granted, shall exist and continue for and during the term of ten years, and that during that time the maximum rates of water furnished by said company to purchasers shall be for first use seventy-five cents per inch, second use fifty cents per inch, and all other uses not to exceed twenty-five cents per inch per day.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

[Approved February 6, 1865.]

AN ACT to incorporate the East Gallatin Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Felix Burton, Alfred Ray, Jas. Burton, N. W. Burris, and others, who are or may be associated with them for that purpose, and their successors, are hereby constituted a body politic and corporate by the name and style of the East Gallatin Town Company, and by that name may sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity in this Territory, having jurisdiction in such cases. Said company is authorized to have and use a common seal and to alter the same at pleasure, and to make such rules and regulations not incompatible with the laws of the United States, the organic act of Montana Territory, or any act of the Legislative Assembly of said Territory, and to appoint or elect such officers and agents for the management of the business of said company as the stockholders may deem necessary.

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SEC. 2. That the said company shall have power to hold, manage and control the land now owned by them as hereinafter described, to wit: Three claims situated on the side of the Missouri river, opposite the town of Gallatin; said claims consist of one hundred and sixty acres (or less) each, and were originally pre-empted by Felix Burton, Alfred Ray, and N. W. Burris, recorded by them in the books of the Gallatin claim club, and by them deeded to the said East Gallatin Town Company. Said company shall have power to survey and erect said tract of land into a town, to be known as East Gallatin, and to sell and transfer any portion thereof and in such manner as they may deem expedient.

SEC. 3. That nothing in this act shall be so construed as to authorize said company to take up more than three hundred and twenty acres of land, to be selected by the corporation from such lands as are described in section two of this act, unless said company desire to make additions to said town site, which may be done by purchase of lands adjoining said town site.

SEC. 4. Said company shall have the power to make additions to the said town tract hereinbefore mentioned by purchase or otherwise, as they may deem expedient: *Provided*, That nothing in this act shall be so construed as to infringe upon the prior rights of any other person or persons.

SEC. 5. This act to take effect and be in force from and after its passage and approval by the governor.

[Approved February 6, 1865.]

AN ACT to incorporate the Missouri River Coal Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That N. W. Burris and George W. Stapleton, their associates and successors, are hereby constituted and created a body politic and corporate, to be known as the Missouri River Coal Mining Company, with the ordinary powers and liabilities, and by that name and style may have perpetual succession, may sue and be sued, plead and be impleaded, make contracts, have and use a

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common seal, and do all other acts and things necessary for the proper conduct and management of their business.

SEC. 2. Said company may prospect for stone coal, and whenever found by them, may claim all veins or beds of coal, together with as many acres of land as they may think proper, and may hold the same as real estate: *Provided*, That all the locations made, and all the lands claimed in this Territory by said compaay, do not exceed one hundred and sixty acres of land for each member of said company, and all such lands and veins are taken in accordance with the laws of the United States and the laws of this Territory.

SEC. 3. Said company shall, within thirty days from the date of any discovery of coal veins, or the location and pre-emption by them of any coal lands, file for record in the office of the recorder for the county in which such discovery or location may be made, a statement and description of the coal beds and lands so located and claimed by them.

SEC. 4. Said company shall have the right to erect all necessary buildings, machinery, &c., and may build and construct all roads, either rail or wagon, which may be necessary to convey their stone coal to market.

SEC 5. This act to take effect and be in force from and after its passage.

[Approved February 6, 1865.]

AN ACT to incorporate the East Ophir Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Fred. Root, Frank Moore, Ed. House, Alfred Nichols, J. B. Cavin, C. E. Irvin, J. W. Creighton, Jesse Armitage, N. W. Burris J. R. Malone, W. W. DeLacy, H. J. Oliver, Robert Hereford, George A. Haynes, John Ryan and Thos. Hosford, and their legal associates for that purpose, and their successors, are hereby constituted a body politic and corporate, by the

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name and style of the East Ophir Town Company, and by that name may sue and be sued, plead and be impleaded, in all courts of law and equity in this Territory, having jurisdiction in such cases. Said company is authorized to have and use a common seal, and to alter the same at pleasure, and to make such rules and regulations for their government, not incompatible with the laws of the United States, the Organic Act of Montana Territory, or any act of the Legislative Assembly of said Territory, and to appoint or elect such officers and agents for the transaction and management of the business of said company, as the stockholders may deem necessary.

SEC. 2. That said company shall have power to hold, manage and control the land now owned by them, as hereinafter described, to wit: commencing on the Missouri river at a point opposite the mouth of the Marias river, running down the bank of said Missouri river forty rods, thence east forty rods, thence south forty rods, thence west to the point of starting on the bank of the Missouri, the same containing three hundred and twenty acres of land; and may cause the same to be surveyed and erected into a town, to be known as the town of East Ophir, and may sell and transfer any portion thereof, in such manner and on such terms as they may think proper.

SEC. 3. All the river front extending into the river as far as necessary, included within the boundaries named in section two of this act, shall be and the same is hereby declared the property of said company for the purpose of erecting wharves, warehouses, &c.: *Provided*, Nothing in this section shall be so construed as to allow said company in any manner to obstruct the navigation of said river.

SEC. 4. Nothing in this act shall be so construed as to allow said company to pre-empt more land than they are entited to by the individual rights of each person belonging to said company when incorporated, according to the pre-emption laws of the United States, and the laws of this Territory, declaratory of the rights of occupants of the public domain.

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved February 6, 1865.]

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AN ACT to incorporate the North Ophir Town Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. J. S. Glick, Frank Angevine, A. Young, Robert Hereford, B. B. Burchet, C. E. Irvine, Horace Annis, George Hill, Oliver Lotsenhiser, N. W. Burris, and others, who may be associated with them for that purpose, and their successors, are hereby constituted a body politic and corporate, by the name and style of the North Ophir Town Company, and by that name may sue and be sued, plead and be impleaded in all courts of law and equity in this Territory, having jurisdiction in such cases; said company is authorized to have and use a common seal, and to alter the same at pleasure; and to make such rules and regulations for their government not incompatible with the laws of the United States, the Organic Act of Montana Territory or any act of the Legislative Assembly of said Territory, and to appoint or elect such officers and agents for the transaction and management of the business of said company as the stockholders may deem necessary.

SEC. 2. That the said company shall have power to hold, manage and control the land now owned by them, as hereinafter described, to wit:—Commencing at the mouth of the Marias River; thence following the north bank of said river fourteen hundred yards to a stake; thence north four hundred yards; thence east to the bank of the Missouri River; thence along the bank of said river to the point of beginning, the same containing three hundred and twenty acres, more or less, and may cause the same to be surveyed and erected into a town, to be known as the town of North Ophir, and may sell and transfer any portion thereof, and in such manner as they may think proper.

SEC. 3. All the river front, extending into the river as far as necessary, included within the boundaries named in section two of this act, shall be and the same is hereby declared the property of said company, for the purpose of erecting wharves, warehouses, &c. *Provided*, That nothing in this section shall be so construed, as to allow said company in any manner to obstruct the navigation of said river.

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SEC. 4. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 6, 1865.]

AN ACT to incorporate the Ophir Ferry Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That James Galliher, his associates and successors, are hereby constituted and created a body corporate and politic, to be known as the Ophir Ferry Company, and by that name and style may sue and be sued, plead and be impleaded in all the courts of law and equity in this Territory; may make contracts, have and use a common seal, which they may alter at pleasure, and may do all acts and things in and about the transaction of their necessary business.

SEC. 2. Said company shall have the exclusive right and privilege of building, maintaining and running a ferry boat on the Marias River, at any point they may select, within three miles of the junction of the said Marias River with the Missouri River, and for this purpose shall have the right to build and construct wagon roads or causeways on either or both sides of said Marias River.

SEC. 3. Said company shall have the term of one year and a half in which to complete said ferry boat, and after the expiration of that time shall keep and maintain a good and safe ferry boat on said river, and shall enjoy the rights and privileges herein granted for the term of ten years from the passage of this act.

SEC. 4. Said company shall have the right to take and collect the following rates of toll: For each wagon, drawn by one span of animals, four dollars; for each additional span of animals, one dollar; for horsemen, one dollar; for loose stock, per head, twenty-five cents.

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved February 6, 1865.]

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AN ACT authorizing Oliver Lotsenhiser to establish a Ferry across Missouri River.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Oliver Lotsenhiser, is authorized and empowered to establish, maintain and operate a ferry across the Missouri River at or near the old Flathead crossing, about forty miles below the town of Gallatin, and for two miles up and down the river above and below said ferry, for the term of six years, with all the privileges, and subject to the conditions prescribed by this act.

SEC. 2. So long, not to exceed six years, as the said Oliver Lotsenhiser, his associates and successors shall maintain, operate and carry on a good, safe and sufficient ferry, at or near the point designated, they shall be authorized to collect the following rates of toll, to wit: For each wagon, drawn by one span of animals, four dollars; for each additional pair of animals, one dollar; for each horse and rider, and each animal packed, one dollar and fifty cents; for each loose animal, cattle, horses and mules, one dollar; hogs, sheep and goats, twenty-five cents; footmen, fifty cents.

SEC. 3. Said Oliver Lotsenhiser, his associates and successors, shall be held and obligated from the fifteenth day of March, of each year, until the river shall be so low that it can be forded with ease and safety, to keep said ferry in good, safe and sufficient order and condition for use at all reasonable hours, and shall keep a competent ferryman and sufficient number of men, who shall transport travellers and property across said river promptly, and without unnecessary delay at all reasonable hours, under penalty of all damages sustained and the forfeiture of this charter.

SEC. 4. No section or part of this act shall be so construed as to prohibit the county commissioners from exercising the same authority over the said ferry as they are authorized to exercise over other licensed ferries; and they may at their discretion, on a petition signed by twenty bona fide citizens of the county in which said ferry is located, alter and fix the rates of toll at the expiration of two years after the passage of this act.

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SEC. 5. This act shall take effect and be in force from and after its passage and approval by the governor.

AN ACT to provide for the compensation of Walter W. DeLacy, for services rendered and money expended in making a map of the Territory of Montana, for the use of the Governor and the Legislative Assembly of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be, and is hereby appropriated, out of the territorial treasury, the sum of six hundred and twenty-five dollars, to be paid to Walter W. DeLacy, for maps of the Territory of Montana, for the use of the Governor and the Legislative Assembly of the Territory of Montana.

SEC. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer, for the sum named in the first section of this act, in favor of Walter W. DeLacy, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage and approval by the governor.

[Approved February 6, 1865.]

AN ACT to incorporate the Bannack Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Thomas J. Hasford, Nathaniel E. Wood and John T. Wilson, and their heirs, assigns and associates, be and are hereby constituted a body politic and corporate, under the name and style of the Bannack Gold and Silver Mining Company. Said corporation shall have power to establish an office in the city of New York for the transaction of their business.

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SEC. 2. The capital stock of said corporation shall be limited to five hundred thousand dollars, and shall be divided into shares of one hundred dollars each. It shall be deemed personal property, and shall be transferable only on the books of said corporation, in such manner as the by-laws shall prescribe, and said corporation shall at all times have a lien upon all the stock of its members and all property invested therein, for all debts due from them to said corporation.

SEC. 3. A majority of the stockholders may, by vote, make such assessments upon each and every share of stock in said corporation, as they may deem proper, until the whole amount be paid in; but no assessment shall be made at any time for a greater sum than five dollars on each share of stock.

SEC. 4. The secretary of said company shall give notice by publication, in at least one newspaper, if any there be, in the territory, of all assessments ordered, at least ten days before such assessments are due; and all stock on which the assessments remain unpaid for twenty days after they become due, may be forfeited for the use and benefit of said corporation.

SEC. 5. The said corporation shall, in their corporate capacity, be capable of suing and being sued, pleading and being impleaded, answering and being answered unto, appearing and prosecuting to final judgment, in all courts whatsoever. They may have a common seal and alter the same at pleasure; elect in such manner as they may determine all necessary officers, fix their compensation and define their duties, ordain and establish by-laws for the regulation of their affairs, and alter and repeal the same, and employ all such agents, mechanics and laborers as they shall deem proper.

SEC. 6. This corporation shall have power in their corporate capacity to contract and be contracted with, to buy, sell and hold property, real and personal, to purchase, pre-empt, hold, sell or work, any gold or silver quartz, lodes or gulch, creek or bar claims, under and subject to the laws of this Territory. They shall have full power to make and execute under their corporate seal, bonds and mortgages, upon said lodes and claims. They may borrow money upon the said bonds or upon the notes of the corporation, at such rates of interest as they think proper. And all such mortgages, notes or bonds, and all other writings signed by the president and secretary of said company, in their official capacity, shall be binding on such corporation.

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SEC. 7. The annual meeting for the election of officers of said corporation, shall be held at such time and place as a majority of the stockholders for the time being may appoint or the by-laws may prescribe; and at all elections, each share of stock shall be entitled to one vote; but if any election of officers shall not take place, or in case of a failure to hold the regular annual meetings, said corporation shall not thereby be dissolved, but the persons then holding the several offices shall continue to hold the same until their successors be elected and qualified.

SEC. 8. This act shall continue and be in force for twenty years from and after the date of its passage.

[Approved February 7, 1865.]

AN ACT to incorporate the Prickly Pear Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1 That A. Ackerman, James Gurley, T. F. McDearmon, J. J. Headley, J. G. Crooks, and T. G. Merrill, and their associates, successors and assigns be, and they are hereby, incorporated as a body politic and corporate, to continue for the term of ten years, by the name and style of the Prickly Pear Gold and Silver Mining Company, and by that name and style shall be capable of making contracts, of suing and being sued, impleading and being impleaded, in all matters whatever, in all courts of law and equity in this Territory, and may have and use a common seal, which may be altered at pleasure, and that they may be capable in law of acquiring and conveying property, personal and real and mixed, and shall have and hold peaceable possession of all the quartz mining claims now in their possession, or which they may hereafter acquire in accordance with the laws of this Territory, when not conflicting with prior vested rights of any other person or persons.

SEC. 2. This corporation shall have power to make contracts of all kinds, and to establish by-laws, rules and regulations for the government of the corporation, not incompatible with the laws of the United States or of this Territory.

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SEC. 3. The said company shall own and be entitled to all the quartz and ore which they may discover or penetrate within any of their claims, which they may discover, excavate, or purchase, so as not to interfere with any prior vested rights to any lode or claims previously owned or possessed by any other person, persons or company, not incompatible with the laws of the United States or of this Territory.

SEC. 4. The capital stock of said company shall be fixed by the by-laws of said company, and divided into shares as they may provide. They may elect and appoint such officers and agents as they may choose; they may borrow money, and issue bonds of the company therefor, but in no case shall they incur any debt to an amount more than twenty per cent. of the capital stock without a previous vote of two-thirds in interest of the entire company: *Provided always*, That the said capital stock of the company shall at no time exceed the sum of one million dollars.

SEC. 5. Any person or persons wilfully, maliciously or wantonly destroying any property belonging to the company, or obstructing work on any of the claims of said company, shall forfeit and pay treble the sum of the damages or losses thereby sustained by said company, to be ascertained by any court having jurisdiction, and shall be deemed guilty of a misdemeanor and punished accordingly.

SEC. 6. This act to take effect and be in force from and after its passage.

[Approved February 7, 1865.]

AN ACT to incorporate the American Gold and Silver Mining Company of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That George Peabody, of the city of London, England, W. A. Dodge, of the city of New York, A. F. Axe, of the city of Philadelphia, Garland Hurt, of St. Louis, Mo., Samuel F. Houser, William H. Miller, and George B. Parker, of the Territory of

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Montana, are hereby constituted a body politic and corporate, under the name and style of the American Gold and Silver Mining Company of Montana, and by said corporate name may sue and be sued, plead and be impleaded, in all courts of law and equity in the Territory of Montana, may have and use a common seal, which may be altered at the pleasure of said corporation.

SEC. 2. That the first board of directors shall consist of five members, to be stockholders in said company, who shall hold their offices until their successors are elected. The said board of directors may make such by-laws, rules and regulations for the government of said corporation, not inconsistent with or repugnant to the laws of the United States or of this Territory, and may change and alter the same at pleasure, at any regular meeting of said board. There shall be a president of said company, to be chosen from the board of directors, who shall hold his office for one year; there may be also chosen from the stockholders a secretary and treasurer, who shall hold their respective offices for the same term as is prescribed for the president, but nothing in this act shall be so construed as to prevent the offices of secretary and treasurer being united in one and the same person at the pleasure of said corporation.

SEC. 3. The capital stock of said corporation shall consist of five hundred thousand dollars, which may be increased from time to time to a sum not to exceed ten million dollars, which said stock shall be represented in certificates or shares of stock of one hundred dollars each. The said shares or certificates of stock shall be deemed personal property, and transferable either by endorsement or upon the books of said company.

SEC. 4. The said corporation shall have the power to pre-empt in the name of the company any lodes, leads or ledges, or claims thereon, of gold or silver, the number of feet so pre-empted not to exceed in extent that now allowed by law to be so taken up or pre-empted upon any lead, lode or ledges. The said corporation shall also have the power and privilege in the name of said corporation to locate and pre-empt claims upon any lead, lode or ledges of cinnabar, provided the extent of ground so located, taken up, or pre-empted shall not exceed in extent that which is now allowed to be taken upon leads, lodes or ledges under the general laws concerning the same. The said corporation, in their corporate name, shall

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also have and possess the power and authority to acquire by purchase, gift, grant, or otherwise, any gold, silver, or cinnabar lead, lode or ledge claims, and any real estate which may be deemed necessary for the operations of the said company, to drive tunnels, sink shafts, build roads, either rail or wagon, dig ditches, erect machinery, and do all other things requisite and necessary for the operations of the said company, when the same shall not interfere with the prior vested rights, and for that purpose may make contracts and be contracted with in any manner not inconsistent with the laws of the United States or of this Territory.

SEC. 5. That the said incorporation, in order to carry on their operations under this act, shall have the power and authority to borrow money upon such terms and at such rates of interest as may be agreed upon, and for the purpose of providing for the payment of said indebtedness, or the interest thereon, may mortgage their property, or any part thereof, or issue their bonds, signed by the president of said company or of the board of directors, and countersigned by the secretary, which said bonds shall be redeemable at such time and place as may be stated in said bonds.

SEC. 6. That the said corporation shall have the power and privilege of establishing offices at such places as they may deem necessary for the purpose of transacting their business, and may open books for subscription in said capital stock at such times and places as may be agreed upon at a regular meeting of the board of directors of said corporation.

SEC. 7. That any three of the above incorporators shall have the power of calling a meeting of the company for the purpose of organizing the same, and shall at said meeting proceed to elect a temporary president, secretary, and treasurer, in accordance with the provisions of this act, which said temporary president, secretary and treasurer shall hold their respective offices until their successors are elected and qualified under such by-laws, rules and regulations as may be prescribed by the said company at their first meeting concerning the election of officers.

SEC. 8. That the rights and privileges granted under this act shall remain in force for and during the term of twenty years.

SEC. 9. This act to be in force from and after its passage and approval by the governor.

[Approved February 7, 1865.]

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AN ACT to incorporate the Upper Missouri River Steamboat Navigation Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That N. W. Burris, G. W. Stapleton, John D. Ritchie, A. V. Brookie, F. Moore, B. S. Peabody, Richard F. Lawless and their legal associates and successors, are hereby constituted and declared a body politic and corporate, under the name and style of the Upper Missouri River Steamboat Navigation Company, and by that name may sue and be sued, plead and be impleaded, and may have and use a common seal, which may be altered at pleasure.

SEC. 2. It shall be lawful for said company to acquire and hold real estate, and to sell, dispose of, and convey by deed any real estate held and occupied by them, wherever and whenever they may deem it for the interest of said company to do so.

SEC. 3. Said company shall have the power to make, and afterwards to alter and change, all needful rules and regulations for the management and government of said company, and shall elect a president, secretary and treasurer, at such time and place as the said corporation herein mentioned may agree upon, and annually thereafter to elect a president, secretary and treasurer, who shall be shareholders in said company: *Provided, however*, That the said secretary and treasurer may be united in one person if deemed advisable by said corporation.

SEC. 4. Said corporation shall have the power and authority, and the exclusive right to open and remove all obstructions, and make navigable that part or portion of the upper Missouri river, from the falls on said river above Fort Benton to the three forks on said river, or what is known as Gallatin City.

SEC. 5. Said corporation shall have the exclusive right to the navigation of said Missouri river between the above mentioned points, with steamboats and all kinds of water crafts, for the term of fifty years, and to carry freight and passengers over the same.

SEC. 6. The capital stock of said corporation shall be fifty

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thousand dollars, which may be increased from time to time by vote of a majority of the stockholders, as may be necessary, and shall be divided into shares of one hundred dollars each, which may be transferred by assignment on the books of said company in such manner as may be prescribed for the interest of said company.

SEC. 7. Said company shall have the power and authority to make and contract debts, to secure by mortgage of their property such debts contracted, to issue bonds, notes and shares of stock sufficient to carry on the business of said company; but in no event shall they by this act be empowered to contract debts beyond their capital stock.

SEC. 8. This act shall take effect and be in force from and after its passage.

[Approved February 7, 1865.]

AN ACT to incorporate the Stinking Water Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Joseph H. Cowan, Sergeant Hall, George James, Henry P. Booth, their associates, successors and assigns, be and they are hereby constituted a body politic and corporate by the name and style of the Stinking Water Ditch Company, and by that name may sue and be sued, plead and be impleaded, in all courts of law or equity within this Territory; may have and use a common seal and alter the same at pleasure, and by their corporate name may purchase, hold and convey property, real, mixed or personal, and make all necessary contracts for locating and building the Stinking Water Ditch and for carrying on the business of the company, and to do all other acts necessary for the construction of said ditch, not inconsistent with the Constitution of the United States or of the laws of this Territory.

SEC. 2. The said company are hereby authorized and empowered at any time within two years from and after the passage of this act, and shall have the exclusive right to commence and construct a ditch from some feasible point on the Stinking Water

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River, near Brunday's Mill; thence running northeastly along the beach lands to a point near the dry fork of Mill Creek.

SEC. 3. The said company shall have the right to take from the Stinking Water River, two thousand inches of water, and shall have the exclusive control of the same, may use the same for irrigation, mills, machinery of all kinds, and for all mining purposes whatsoever; may sell or lease the same or any portion thereof, for any of the purposes above named, and on such terms as may be agreed upon by the parties interested; but if the parties cannot agree upon said terms, then the county commissioners of the county in which said ditch is located, shall fix the terms, and said company may maintain and operate the same for the term of twenty years.

SEC. 4. The said company shall have the right to take and convey in said ditch all the surplus water from any of the streams that may be crossed by said ditch. *Provided*, That by so doing, they shall not injure or interfere in any manner with the prior rights of any other person; *and provided, further*, That before taking any water from such streams, the said company shall obtain the consent of all actual settlers living on said stream below the line of the ditch, and then only on such conditions as may be agreed upon by the parties interested.

SEC. 5. Said company shall have power to appoint or elect such officers or agents as they may deem necessary, and to make such by-laws, rules and regulations as they may deem necessary for the transaction of business and the management of their affairs; and may require said officers or agents to give bond with security for the faithful performance of their duties.

SEC. 6. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 7, 1865.]

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AN ACT to incorporate the Grasshopper Canon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That John Scudder, John M. Galloway, and their associates and successors, be and are hereby declared and constituted a body politic and corporate, under the name and style of the Grasshopper Canon Road Company, and by that name may sue and be sued, plead and be impleaded in all courts of law and equity in this Territory, may have and use a common seal, and alter the same at pleasure, and shall continue for the term of ten years from the passage of this act.

SEC. 2. That said company shall have the exclusive privilege of building and constructing a toll road between the town of Marysville, in Beaver Head County, Montana Territory, and the lower mouth of the Grasshopper Creek Canon, for a distance of about seven miles, through what is known as the Grasshopper Creek Canon, may erect and keep upon the same two toll gates, at which toll may be collected at such rates as may be fixed and regulated from time to time by the board of county commissioners.

SEC. 3. That said company shall have the right to make all rules, regulations and by-laws that may be necessary for the conduct and transaction of their affairs.

SEC. 4. That said company shall commence building and constructing said road within six months, and complete the same within two years from and after the passage of this act.

SEC. 5. This act to take effect and be in force from and after its passage and approval by the governor.

[Approved February 7, 1865.]

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AN ACT to incorporate the Peter Funk Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That M. Courtright, John S. Lott, B. White, Ely W. Sibley, Wm. Right and ——— Ritter, are hereby created and constituted a body corporate and politic, to be known as the Peter Funk Mining Company, and by that name and style may sue and be sued, plead and be impleaded, in all courts of law and equity in this Territory, may have and use a common seal, which they may alter at pleasure, may make such by-laws and regulations for the government of said company as they may think proper, may elect a president, secretary and treasurer, who shall be governed by, and whose duties shall be prescribed by the by-laws of said company.

SEC. 2. Said company may pre-empt and hold in the name of said company, two hundred feet on any lead, lode or ledge, either gold or silver, in this Territory, for each member of said company, and may sell and convey the same by deed or otherwise.

SEC. 3. Said company may erect and maintain all kinds of mills, arastras, or machinery necessary for either gold or silver mining, may sink shafts and drive tunnels, may convey water in flumes or side ditches to their places of business, for the purpose of working their machinery, mills, arastras, &c., and may do all other acts and things necessary for the successful working of gold or silver mines.

SEC. 4. The capital stock of said company shall be one hundred thousand dollars, which may be increased to five hundred thousand dollars.

SEC. 5. Said company may borrow money and secure the payment of the same by mortgage on their company property.

SEC. 6. No part of this act shall be so construed as to interfere with the prior rights of any other person or persons, or to conflict with the laws of this Territory.

SEC. 7. This act to take effect and be in force from and after its passage.

[Approved February 7, 1865.]

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AN ACT to incorporate the Gallatin Valley Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That R. C. Knox, W. B. Dance, William Chumasero, A. M. Torbett, N. P. Langford, Lucius Nims, George B. Parker, H. L. Hosmer, S. T. Houser, and their associates, successors and assigns, be and they are hereby constituted a body politic and corporate, under and by the name and style of the Gallatin Valley Ditch Company, and by that name may sue and be sued, plead and be impleaded in all courts in this Territory, and may have a common seal, which they may use and alter at pleasure.

SEC. 2. Said company shall have for the full term of twenty years from the passage of this act, the full privilege of making, constructing, running and keeping in repair a ditch, on the west side of the Gallatin River, commencing at a point on the west side of the said Gallatin River, about five miles above the Bozeman crossing on the main Gallatin, or within said five miles above said crossing, and running on the west side of said Gallatin River to the confluence of the east and west Gallatin Rivers.

SEC. 3. The said company shall have the right of way along the line of said ditch for a distance of two rods on each side thereof, but said company shall be deemed and held liable for all damage done to the property of others in the construction of said ditch at a fair valuation, in which the benefits accruing from its construction shall also be considered, which said ditch is intended to cover all of the high bottom and table lands fit for farming purposes on the west side of the Gallatin River down to the confluence of the east and main forks of said Gallatin River, and when so located shall have the exclusive right to maintain and operate the same; and said company shall commence the building and construction of the ditch on or before the first day of June A. D. 1865.

SEC. 4. The said company shall be allowed to collect from those using water from their works such price therefor as shall be agreed upon by the parties, and they may supply water for mills and machinery of all kinds, and such other purposes as may be desirable.

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SEC. 5. The capital stock of said company shall be ten thousand dollars, which may be increased from time to time as a majority of the stockholders at any regular meeting may determine by vote. Said stock shall be divided into shares of one hundred dollars each, which shall be transferable in such manner as the by-laws shall ordain.

SEC. 6. The incorporators abovenamed, or a majority of them, shall constitute the first board of directors, and they shall, immediately after one thousand dollars of stock shall be subscribed, elect one of their number president, and such other officers as may be necessary for the management of their business.

SEC. 7. The first election shall be a general election, and may be held at any time after the passage of this act, upon the written request of five of the incorporators, at a time and place therein mentioned, reasonable notice of said time and place being given by posting notices in five public places in Madison, and all subsequent elections shall be held annually thereafter at such time and place as shall be designated in the by-laws.

SEC. 8. The said company shall have power to make all such by-laws as may be necessary for the government and management of the concerns of the company.

SEC. 9. The directors shall have such powers and perform such duties as may be assigned them by the by-laws of the company.

SEC. 10. All persons who shall interfere with or wantonly and maliciously injure the said company's ditch, or the appurtenances thereof, shall, upon conviction, be deemed guilty of a misdemeanor, and punished by a fine not less than fifty nor more than three hundred dollars, or imprisonment not exceeding six months, or both.

SEC. 11. The company may purchase and hold property, both real and personal, which shall be necessary for the exercise of the legitimate business and powers herein granted.

SEC. 12. If any stockholder shall neglect or refuse to pay any assessment upon the stock held by him in said company within thirty days after such assessment shall be made in pursuance of the by-laws, one-half part of such stock so assessed shall be subject to sale at public auction, to the highest bidder, for cash, after twenty days notice of the time and place of such sale shall have been given in some newspaper of general circulation in this Territory,

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but no more than one-half of the stock held shall be liable to be sold for assessment.

SEC. 13. Assessments may be made by the directors from time to time as may be necessary, but such assessments shall not exceed the amount of stock held by any stockholder. Said company shall have a lien upon all stock held by any stockholder for all indebtedness due to said company, and no stock shall be transferred while such indebtedness exists.

SEC. 14. Said company shall have the right from time to time to borrow money for the purpose of constructing the necessary works for the carrying on of their business in such sum or sums as may be necessary for such purpose, and at such rates of interest as may be agreed upon, and may secure the payment thereof by mortgage upon any or all the property and franchises of the company.

SEC. 15. No person shall be a director after ceasing to be a stockholder; all vacancies may be filled by the remaining directors.

SEC. 16. Said company shall have the right immediately to survey and locate the route of said ditch, and when so located shall have the exclusive right to maintain and operate the same for a space of two rods in width on each side thereof, and extending the whole length thereof. But nothing herein contained shall be construed to prohibit any person or persons from irrigating their own land.

SEC. 17. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 8, 1865.]

AN ACT to incorporate the Montana Quick Silver Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Frederick Root, John Potter, Charles Wyman, Wooster Wyman, William Buchanan, and Buck Buchanan, and their associates are hereby created a body corporate and politic, to be known as the Montana Quick Silver Company, and by that

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name and style may sue and be sued, plead or be impleaded in all courts of law and equity in this Territory; may have and use a common seal, which may be altered at pleasure; may make contracts; may make by-laws and all needful rules and regulations for the government of said company; may elect a president, secretary and treasury, whose duties and terms of office shall be prescribed by their by-laws, and may do all other acts and things necessary for the transaction of their business.

SEC 2. Said company may pre-empt and hold as real estate two hundred feet for each member of said company on all cinnabar or quick silver veins or lodes not otherwise claimed, or that may be discovered by them in this Territory.

SEC. 3. Said company may erect and construct all buildings, furnaces and machinery necessary for extracting the quick silver from the ore, and for this purpose may pre-empt and hold as real estate any amount of ground not to exceed thirty acres, and may sink shafts, drive tunnels, build such roads, either rail or wagon, as they may need for the purpose of carrying their cinnabar ore from the mine to their machinery.

SEC. 4. All claims and locations made by said company shall be recorded in the county recorder's office of the county in which such claims or location shall be made.

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT to incorporate the Boulder Town Company in the Town of Jefferson.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the boundaries of Boulder Town be as follows: commencing at the north side of Boulder crossing, on the Gillett road, thence north one half mile, thence west one mile, thence south one half mile, thence east one mile to the place of beginning, containing three hundred and twenty acres.

SEC. 2. That N. Wall, W. Berkins, H. Stevens, G. W. Case,

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R. Heaton, J. J. Healy, and their associates, assigns and successors, be, and are hereby, constituted a body politic, under the name and style of the Boulder Town Company, with the ordinary powers and liabilities of like corporations, namely: to make and use a corporate seal, to sue and be sued, to plead and be impleaded, to elect officers for the government of said town company, and for the transaction of such business as may legally come before said town company.

SEC. 3. That N. Wall is hereby appointed president, G. W. Case secretary, W. Berkins treasurer, H. Stevens, R. Heaton and J. J. Healy trustees of said town company, to hold their offices until the first Monday of May, and until their successors are elected.

SEC. 4. That on the first Monday of April in each year there shall be an election of officers of said town company, and who shall hold their offices for one year unless removed by a majority of said company. The officers of said town company shall consist of a president, secretary, treasurer, and three trustees, whose duties shall be such as usually devolve upon such officers.

SEC. 5. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 8, 1865.]

AN ACT to incorporate the Phœnix Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That J. Rodgers, J. McGrath, Andrew O'Connell, Joseph Healy, John Murphy, John O'Mahony, and their associates, successors, and assigns, be, and they are hereby, incorporated as a body corporate and politic, to continue for the term of ten years, by the name and style of the Phœnix Gold and Silver Mining Company, and by that name and style shall be capable of making contracts, of suing and being sued, impleading and being impleaded in all matters whatever in all courts of law and equity in this Ter-

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ritory, and may have and use a common seal, which may be altered at pleasure, and that they may be capable in law of acquiring and conveying property, personal, real and mixed, and shall have and hold peaceable possession, of all other property which they may hereafter acquire, when not interfering with any prior vested rights, subject to the laws of the United States and of this Territory.

SEC. 2. This corporation shall have power to make contracts of all kinds, and to establish by-laws, rules and regulations for the government of the corporation not incompatible with the Constitution of the United States and the laws of the Territory.

SEC. 3. The said company shall own and be entitled to all the quartz and mineral and ore which they may discover or penetrate within, any of their claims which they may discover, excavate or purchase, so as not to interfere with any prior rights to any lode or claims previously owned or possessed by any other person, persons or company not incompatible with the Constitution of the United States and the laws of the Territory.

SEC. 4. The capital stock of said company shall be fixed by the by-laws of said company, and be divided into shares as they may provide. They may elect and appoint such officers and agents as they may choose; they may borrow money, and issue bonds of the company therefor; but in no case shall they incur any debts to any amount more than twenty per cent. of the capital stock without a previous vote of two-thirds in interest of the entire company. *Provided, always*, That the said capital stock of the company shall at no time exceed the sum of one million dollars.

SEC. 5. Any person or persons wilfully, maliciously, or wantonly destroying any property belonging to the company, or obstructing work on any of the claims of said company, shall forfeit and pay treble the value of the damages or losses thereby sustained by said company, to be ascertained by any court having jurisdiction, and shall be deemed guilty of a misdemeanor and punished accordingly.

SEC. 6. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 8, 1865.]

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AN ACT to incorporate the Kalida Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That John Buchanan, Matthew Carroll, Geo. Steele, G. E. Upson, W. Berkins, G. W. Case and J. C. Sarsfield, their associates, successors and assigns, be and they are hereby incorporated as a body politic and corporate, to continue for the term of ten years by the name and style of Kalida Gold and Silver Mining Company, and by that name and style shall be capable of making contracts, of suing and being sued, impleading and being impleaded, in all matters whatever, in all courts of law and equity in this Territory, and may have and use a common seal, which may be altered at pleasure, and that they may be capable in law of acquiring and conveying property, both personal and real and mixed, and shall have and hold peaceable possession of the claim or claims in their possession, and of all others which they may hereafter acquire providing they do not come in conflict with any prior vested rights, subject to the laws of the United States and of this Territory.

SEC. 2. This corporation shall have power to make contracts of all kinds and to establish by-laws, rules and regulations for the government of the corporation not incompatible with the constitution of the United States and the laws of this Territory.

SEC. 3. The said company shall own and be entitled to all the quartz and ore which they may discover or penetrate within any of their claims, which they may discover, excavate or purchase, so as not to interfere with any prior rights to any lode or claim previously owned or possessed by any other person, persons or Company, not incompatible with the constitution of the United States and the laws of this Territory.

SEC. 4. The capital stock of said company shall be fixed by the by-laws of said company and divided into shares as they may provide; they may elect and and appoint such officers and agents as they may choose; they may borrow money and issue bonds of the company therefor, but in no case shall they incur any debt to an amount more than twenty per cent. of the capital stock, without a

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previous vote of two-thirds interest of the entire company: *Provided, always*, that the said capital stock of the company shall at no time exceed the sum of one million dollars.

SEC. 5. Any person or persons wilfully, maliciously or wantonly destroying any property belonging to the company or obstructing works on any of the claims of said company, shall forfeit and pay treble the value of the damage or losses thereby sustained by said company, to be ascertained by any court having jurisdiction, and shall be deemed guilty of a misdemeanor and punished accordingly.

SEC. 6. This act to take effect and be in force from and after its passage and approval by the governor.

[Approved February 8, 1865.]

AN ACT to incorporate the Ophir and Flat Head River Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That M. Carroll, George Steele and J. J. Healy, their associates, successors and assigns, be and are hereby declared a body corporate and politic, under the name and style of the Ophir and Flat Head River Wagon Road Company, for the term of ten years; and by that name shall sue and be sued, plead and be impleaded, in all courts of law and equity in this territory; and may have and use a common seal that may be altered at pleasure.

SEC. 2. Said company shall have power to make and afterwards to alter any and all needful rules and regulations for the government of said company, for the management of a road hereafter to be constructed by them, commencing at Ophir, on the west side of Marias river, thence west by Lewis and Clark's pass to Horse Prairie, about twenty-five miles below the junction of the Flat Head river with the Bitter Root river.

SEC. 3. Said company shall have power and authority to collect toll on said road as hereinafter mentioned from all persons travelling on and over said road with wagons, vehicles of any kind, with horses, mules, asses, cattle, hogs and sheep, and any person

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passing the gate on said road without paying toll, and all persons refusing to pay toll, as required by this act, shall forfeit and pay the sum of ten dollars for each and every failure; to be recovered by said corporation in an action of debt, before any justice of the peace in any district, township or county in which said road, or any part thereof, is situated.

SEC. 4. Said company shall have power to erect one toll gate on said road and to employ a toll gatherer at said gate, who shall demand and collect toll at the following rates, to wit: For each wagon or vehicle drawn by one pair of horses, mules or cattle, three dollars; for each additional pair of horses, mules or cattle, one dollar; for each carriage or buggy drawn by one animal, one dollar and fifty cents; for each horseman or pack animal, one dollar; for all loose stock, per head, except hogs and sheep, fifty cents; for hogs and sheep, per head, twenty-five cents: *Provided*, That after two years the county commissioners of any county through which the road shall pass, may change the rates of toll, on the application of fifty citizens of either of said counties.

SEC. 5. Upon complaint being made to any justice of the peace, in any town, district or county in which said road is situated, that the same is not in good condition for wagons and vehicles, said justice shall summon said corporation to appear before him at a time to be by him named, not exceeding ten days from the day said complaint is made; and if it shall appear that said road is impassable for wagons and vehicles, and that the complaint is true, said justice shall render a judgment against said corporation, as defendant, for the cost of proceedings; and thereupon no toll shall be collected on said road until the same is made in good condition for wagons and vehicles.

SEC 6. If said corporation shall demand and collect any toll after any such judgment, as provided in section five, shall have been rendered, before the said road shall have been repaired and put in good order, it shall forfeit and pay the sum of twenty dollars for each such violation, which may be sued for by any person, before any justice of the peace in any township, district or county in which said road or any part thereof is situated.

SEC. 7. This act to take effect and be in force from and after its passage and approval by the governor.

[Approved February 8, 1865.]

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AN ACT to establish a Wagon Road from the waters of the Grasshopper Creek to Hell Gate.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That E. B. Johnson and L. C. Miller, and their associates and assigns, be and are hereby constituted a body politic, under the name and style of the Johnson Wagon Road Company, with the ordinary powers and liabilities of corporations, and may use a company seal, and sue and be sued, plead and be impleaded in all courts of law or equity having jurisdiction in this Territory.

SEC. 2. Said company may make and establish a wagon road from a point on Grasshopper Creek above Sturgis' saw mill to the Mullen Road, at or near Hell Gate River.

SEC. 3. Said company may locate and make said road over the nearest and most feasible route, and have the exclusive right of way for one mile on each side of said road.

SEC. 4. And it shall be lawful for said company, their heirs and associates, to collect the following rates of toll, for each fifty miles, viz:—For each wagon, or vehicle drawn by two animals, three dollars; and for each additional pair of animals, fifty cents; for horse and rider, fifty cents; for each pack animal, fifty cents; and for loose animals, fifteen cents, each.

SEC. 5. And said company shall make or cause to be made the aforesaid road, within twelve months from the passage of this act; and if not thus made and completed within the time aforesaid, this charter shall be null and void.

SEC. 6. And the above named company shall have the right to collect toll on said road for the period of ten years: *Provided*, That no part of this act shall be so construed as to prevent the county commissioners at any time to change and fix the rates of toll which said company may collect.

SEC. 7. This act to take effect and be in force from and after its approval by the governor.

[Approved February 8, 1865.]

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AN ACT to dissolve the bonds of matrimony between William Gibson and Elizabeth D. Gibson.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony existing between William Gibson and Elizabeth D. Gibson, his wife, be and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

[Approved February 8, 1865.]

AN ACT to dissolve the bonds of matrimony existing between Charles Bartholomew and Esther L. Bartholomew.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony existing between Charles Bartholomew and Esther L Bartholomew, his wife, be and the same are hereby dissolved.

SEC. 2. This act to be in force from and after its approval by the governor.

[Approved February 8, 1865.]

AN ACT to dissolve the bonds of matrimony existing between George C. Howard and Lucy G. Howard.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony heretofore and now existing between George C. Howard and Lucy G. Howard, his wife, be and the same are hereby dissolved.

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SEC. 2. This act to take effect and be in force from and after its approval by the governor.

[Approved February 8, 1865.]

AN ACT to incorporate and establish the Montana and Idaho Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Theodore D. Maltby, John M. Creighton, Asa Mathews, H. L. Davis, and James Glasscock, be and are hereby constituted a body corporate, under the name and style of the Montana and Idaho Wagon Road Company.

SEC. 2. Said company shall have power, in its corporate capacity and name to sue and be sued, contract and be contracted with, buy and sell, and have all the necessary powers of a corporation.

SEC. 3. Said company shall have the right to locate and construct a wagon road, commencing on the summit of the Bitter Root Mountains, at the line dividing Montana and Idaho, and at the head of the northwest fork of the Bitter Root River, near the Nez' Perces trail, and running thence along or near said stream to its confluence with Repes fork of Bitter Root River, up and near said Repes fork to or near its source; thence across the Rocky Mountain range to the head of the north fork of Big Hole River; thence down along or near said fork to or near its confluence with the main Big Hole River; thence down along or near said river to the Deer Lodge and Virginia City Wagon Road.

SEC. 4. It shall be the duty of said corporation to build and construct a good wagon road, to build bridges and establish ferries, and keep the same in good repair for the convenience of the travelling public.

SEC. 5. That within six months from the passage of this act, the said corporation shall commence constructing said road, and within three years thereafter they shall complete the same, otherwise this franchise shall be void.

SEC. 6. That when said corporation shall have completed said

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road as aforesaid, they shall be authorized to erect one toll gate on each, forty miles distance on said road, and to charge and collect tolls thereat, provided the aggregate toll on the whole road does not exceed the following rates: For each wagon or vehicle drawn by one horse or mule, four dollars; for each wagon or vehicle drawn by one span of horses or mules, or yoke of cattle, eight dollars; for each additional span of horses or mules or yoke of cattle, two dollars; for one man and horse or mule, one dollar; for each pack animal, one dollar; for loose horses, mules or cattle, fifty cents per head; for sheep, goats or swine, twenty-five cents per head.

SEC. 7. The said company shall have a president, secretary and treasurer, and such other officers as the by-laws of said company may direct.

SEC. 8. The capital stock of said company shall be any sum not to exceed three hundred thousand dollars, in shares of one hundred dollars each; and when ten thousand dollars shall be subscribed to the capital stock, the corporation shall have power to make assessments, collect the same and proceed to the making of said road.

SEC. 9. The legislative assembly after the expiration of six years from the date of the completion of said road, shall have authority to alter or modify the above rates of toll as in their judgment the public interest may require.

SEC. 10. This act shall take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT to incorporate the Virginia City and Camas Creek Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That John C. Ryan, Patrick Ryan, and their legal associates and successors are hereby constituted a body corporate and politic under the name and style of the Virginia City and Camas Creek Wagon Road Company, and by that name may sue

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and be sued, plead and be impleaded, and may have and use a common seal which may be altered at pleasure.

SEC. 2. Said road shall extend from Virginia City in Madison county to Brown's Gulch or Bacheldor's Gulch; thence up the said gulch or gulches to the dividing ridge between the waters of the Madison river and the said gulches, thence by the most feasible and direct route to the southern boundary line of this Territory, at or near the head of Camas creek.

SEC. 3. It shall be lawful for said company to acquire and hold any real estate necessary for the use of toll keepers on the line of said road, and for no other purpose whatsoever, and to sell, dispose of and convey by deed any real estate so used and occupied for the use of toll keepers on said road, whenever they may deem it for the interest of said corporation to do so.

SEC. 4. Said corporation shall have power to make and afterwards to alter and change all needful rules and regulations for the government and management of said road; and shall elect a president, secretary and treasurer, at such time and place as the said corporation herein mentioned may agree upon; and annually thereafter to elect a president, secretary and treasurer, who shall be shareholders in said company: *Provided, however*, That the said secretary and treasurer may be united in one person, if deemed advisable by said corporation.

SEC. 5. Said corporation by their agents shall have power and authority, for a term of ten years, to collect toll as hereinafter mentioned from all persons travelling upon and over said roads with wagons or vehicles of any sort, with horses, mules, asses, and with cattle, sheep and swine; and any person who shall pass any toll gate upon said road authorized to be erected and established by said corporation without having first paid toll, as required by this act, shall forfeit and pay for each and every offence the sum of twenty-five dollars, to be recovered by an action of debt by said corporation.

SEC. 6. In all recoveries had by said corporation, as provided in the last preceding section, one-half of the sum so recovered shall be for the use of the informant and the other half for the use of the county in which said toll gate may be situated; and it shall not be necessary to be stated in the demand of the plaintiff that the sum sued for, as provided in the preceding section, shall be stated for

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the use of the informant and said county; nor shall the interest of the informant in the recovery of the said one-half of said sum preclude him from testifying in the case, nor shall it preclude any citizen of the Territory from so testifying on behalf of the plaintiff.

SEC. 7. There may be erected upon the main line of said road toll gates to the number of two, and no more, at which gates respectively there may be collected upon all wagons, vehicles, horses, mules, asses, cattle, sheep and swine passing over said road the following tolls, and no more, viz: upon each wagon or vehicle drawn by one span of horses, mules, or yoke of oxen, the sum of two dollars; upon each additional span of horses, mules, or cattle, to each wagon or vehicle, the sum of thirty cents; upon each riding horse or mule, the sum of twenty-five cents; upon each pack animal the sum of twenty-five cents; upon horses, mules, cattle and asses, driven upon or over said road, the sum per head of ten cents; upon all sheep and swine driven over said road, the sum per head of two cents. *Provided*, That no toll gate shall be erected or maintained nearer than nine miles of the city of Virginia.

SEC. 8. It shall not be lawful for any gate keeper on said road to collect tolls from any person passing through said gates when going to or returning from funerals.

SEC. 9. Upon complaint being made to any justice of the peace in any county through which said road extends that any portion of said road is not in reasonably good condition for wagons or vehicles, the said justice shall summon the gate keeper nearest the place on said road complained of to appear before him on a day certain, not more than five days from the day of complaint, at a certain hour in the day, to be by the justice fixed, and if it shall appear to the justice that the complaint is true, judgment shall be rendered against the said corporation, as defendant, for the costs of the proceedings; and thereupon no tolls shall be collected by said gate keeper so summoned until said road shall be put in good repair for the passage of wagons and vehicles.

SEC. 10. If any gate keeper shall demand and collect any tolls before said road shall be repaired and made passable, as provided in the section above recited, he shall forfeit and pay the sum of twenty-five dollars, which may be sued for by any person, in an action for debt, for the use of the informant, before any justice of the peace in the county in which said gate keeper may reside.

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SEC. 11. This act shall take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT to incorporate the Sinne Bridge Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That John Fraser, James Read, William Johnson, and their legal associates, successors and assigns, are hereby created and constituted a body politic and corporate, under the name and style of the Sinne Bridge Company, and under that name and style are capable of suing and being sued, impleading and being impleaded in all courts of law and equity having jurisdiction in such cases in this Territory.

SEC. 2. Said company are hereby authorized to build a bridge across Wisdom or Big Hole River at a point where the road from Virginia City to Deer Lodge Valley crosses the Big Hole River, and shall have exclusive right of way across said river for one mile on each side of said bridge, and to collect toll for crossing said bridge as follows:—For each wagon or vehicle drawn by two horses, mules or oxen, two dollars; for each additional pair of horses, mules or oxen, fifty cents; for each packed animal, fifty cents; for each man and horse or mule, fifty cents; for each head of loose horses, cattle, mules or asses, twenty-five cents; for each head of sheep or hogs, ten cents.

SEC. 3. Said company shall maintain and have said bridge for ten years, provided that nothing in this act shall be so construed as to prevent the county commissioners from regulating the rates of toll from two years after the passage of this act upon petition of thirty residents of the county in which said bridge is located.

SEC. 4. Said company shall repair and keep in order the road for fifteen miles west of said bridge, and upon complaint of any person that may be travelling upon said road, made to the nearest magistrate that said portion of the road is not in good order for the use and passage of wagons, said company shall not be entitled to

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collect toll for crossing said company's bridges until said road is put in good order for the use of the public.

SEC. 5. This act to take effect and be in force from and after its approval by the governor.

[Approved February 8, 1865.]

AN ACT to incorporate the Ionia Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That for the purpose of developing the gold, silver and other mineral resources of the country, and encouraging the prospecting and mining interests of the Territory of Montana, David Cowan, C. M. Curtis, William A. Shrayer, Frank Steel, N. T. Butler, George S. Stienbirger, D. D. T. Perry, and William Decker, of Virginia City, in said Territory, and such other persons as may hereafter become associated with them, and their successors, be and they are hereby constituted a body politic and corporate, by the name of the Ionia Gold and Silver Mining Company, for the term of twenty-five years, and by and under such corporate name, may make, contract and be contracted with, sue and be sued, plead and be impleaded in all courts of law or equity in the Territory, and may have and use a common seal and alter the same at pleasure.

SEC. 2. Any five of the corporators named in this act may proceed to open books for subscriptions to the capital stock of said company, after giving ten days notice thereof, by posting three printed notices of the time and place of the same, in three public places in the city of Virginia, in this Territory. When an amount of stock is subscribed of ten thousand dollars, they may proceed to organize under this act, and there shall be elected from the stockholders of said corporation five directors who may serve for one year or until their successors are elected, and from the said directors there shall be elected a president, and also there shall be elected a secretary and treasurer; but the office of secretary and treasurer may be united in one person if deemed necessary.

SEC. 3. The capital stock of said company shall be ten thou-

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sand dollars, which may be increased from time to time to time, to a sum not exceeding one million dollars, to be represented by certificates of fifty dollars for each share paid in. Said stock shall be deemed personal property and transferable by endorsement or on the books of said company. The said company shall have power to establish an office in the city of Virginia, in this Territory, one in the city of New York, one in the city of San Francisco, one in the city of Chicago, and one in the city of Denver, in the Territory of Colorado, if deemed necessary, for the transaction of their business. The stockholders shall be liable only to the amount of stock severally held by them in said company.

SEC. 4. The board of directors of said corporation may pass such by-laws, rules and regulations for their government as they may deem expedient, not inconsistent with the laws of the United States or of this Territory; and may alter or amend the same at any regular meeting of the board of directors.

SEC. 5. The said company may prospect for, and shall have power in the name of said corporation, to pre-empt lode or lead claims, of whatever kind, nature or description, not exceeding the number now limited or may hereafter be limited by law, which said lead or lode claims shall be the joint property of the several stockholders of said corporation, with the power to acquire and hold, by purchase or otherwise, any lode or lead claims, real estate and other property, of whatever description, for the purpose of carrying on the business of mining, crushing, smelting or otherwise extracting or separating minerals of whatever sort or description from the ore, quartz or pyrites, either by water or steam, and for the purpose of mining, may make or construct railroads, drive tunnels, sink shafts, and do and perform all other things necessary and requisite to be done for the purpose of mining, either by arastras, furnaces or quartz mills, with the necessary machinery belonging and attached thereto.

SEC. 6. The said corporation is authorized to sell, convey or dispose of any of their property, in the manner they may prescribe by the by-laws, rules or regulations they make for their government, a copy of said by-laws, rules or regulations being signed by the president of said board, and certified to by the secretary of said corporation, and recorded in the office of the recorder of deeds of

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the county in which said real estate, lode or lead claim or claims or other property may be located.

SEC. 7. This act to be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT to incorporate the Ottawa Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Richard Roseter, J. W. Myers, W. B. Elleson, are hereby created a body corporate and politic, to be known as the Ottawa Mining Company, and by that name and style may sue and be sued, plead and be impleaded in all courts of law or equity in this Territory, may make contracts and establish by-laws, rules and regulations for the government of said company, and may elect a president, secretary and treasurer, whose duties and term of office shall be prescribed by the by-laws of said company, may take, hold, possess and enjoy the fee simple or other title to such property real and personal as may be necessary for the transaction of their business.

SEC. 2. Said company may hold and enjoy, subject to the laws of this Territory, two hundred feet for each member of said company on any lead, lode or ledge, either gold or silver, not previously pre-empted, and may sell and dispose of the same and make good and sufficient deeds therefor.

SEC. 3. Said company may erect and maintain any or all kinds of machinery for the purpose of smelting, crushing or otherwise extracting the gold or silver from the quartz taken from their claims, and may sink shafts, drive tunnels, build and construct all roads, either rail or wagon, which may be necessary for conveying their own quartz to their machinery, and do all other acts and things for the successful transaction of their said business.

SEC. 4. The capital stock of said company shall consist of two hundred thousand dollars, which shall be divided into shares of one hundred dollars each. Said shares may be disposed of by transfer on the books of the company.

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SEC. 5. This act to take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT to incorporate the Madison County Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That R. M. Hagaman, R. N. Hill, Nathan Steinx, T. C. Jones, E. B. Neally, and their associates and successors, shall be and are hereby constituted and created a body politic and corporate, under the name and style of the Madison County Mining Company, and by that name shall be competent to make contracts, sue and be sued, plead and be impleaded, contract debts, hold credits, purchase, pre-empt, hold, work and dispose of mining claims, mill sites, water privileges, and all other property necessary to the business of said incorporation and to have a corporate seal and device.

SEC. 2. The capital stock of said company shall be five hundred thousand dollars, which the company may increase to one million dollars, to be divided into shares of one hundred dollars each.

SEC. 3. The company shall have power to elect such officers and prescribe such rules and regulations for its government as it may deem proper; *Provided*, That no act may be performed by said company or its officers contrary to the Constitution and laws of the United States, and the Organic Act of this Territory.

SEC. 4. The company shall hold its charter and the rights and privileges under such charter for the term of twenty-five years.

SEC. 5. The principal place of business of said company shall be located at Virginia City, in this Territory, and the company may establish such other branches as may be thought proper at other places in this Territory.

SEC. 6. This act shall take effect from and after its passage.

[Approved February 8, 1865.]

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AN ACT to incorporate the Silver Bow Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That S. O. Humprey, Wm. Allison, and their associates, successors and assigns, are hereby constituted a body corporate and politic, capable of suing and being sued, pleading and being impleaded in all courts of law and equity, under the name and style of the Silver Bow Ditch Company.

SEC. 2. The said company shall have for the term of ten years from and after the passage of this act, the exclusive right to take water from the Silver Bow Creek, at any point within nine miles above its mouth, and to convey the same in such ditch or ditches to little Deer Lodge River, as may in the opinion of the company, best accommodate the interest of miners in said region. And said company shall also have the right and privilege to construct a dam to accomplish the object of said ditch.

SEC. 3. The capital stock of said company shall be ten thousand dollars, which may be increased at the discretion of the company to two hundred thousand dollars.

SEC. 4. Said company shall have power to make such by-laws as may be necessary for management of the business of said company.

SEC. 5. The said company shall have the right to charge and collect payment for all water furnished by the ditch and used by others at such rates as may be agreed upon by the parties.

SEC. 6. The said company shall have the right to pre-empt, purchase and hold real estate or mining claims whenever they may deem it necessary so to do

SEC. 7. Any person or persons who shall wilfully injure the said company's ditch or ditches or appurtenances, shall be deemed guilty of a misdemeanor and punished, upon conviction, by fine or imprisonment or both, at the discretion of the court before whom such conviction is made.

SEC. 8. This act shall take effect and be in force from and after its passage.

[Approved February 8, 1865.]

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AN ACT to dissolve the bonds of matrimony between Henry C. Wright and Margaret J. Wright.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony heretofore and now existing between Henry Clay Wright and Margaret J. Wright, be and the same are hereby dissolved.

SEC. 2. This act to take effect from and after its passage.

[Approved February 8, 1865.]

AN ACT to incorporate the Orofino Mining Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. W. C. Gillette, James King and C. F. Clark, and their associates, are hereby constituted a board of corporators, known as the Orofino Mining Company, and by that name and style may sue and be sued, plead and be impleaded, in all the courts of record in Territory.

SEC. 2. Said company shall have the power to pre-empt, to buy and sell gulch mining claims and gold and silver lodes, and stone coal beds, to build furnaces and crushing mills, to hold water privileges, to use and employ all machinery that they may deem necessary in carrying on the mining business in all its departments and details.

SEC. 3. The capital stock of said company shall be five hundred thousand dollars, divided into shares of two hundred dollars each, and each holder of the stock of said company shall be entitled to cast one vote for each share of stock he may hold at all elections for directors of said company, and for the election of such other officers as may be necessary.

SEC. 4. The said company shall have the privilege to establish offices at such points and places as they may deem necessary for

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transacting their business, and may open books for subscription to said capital stock at such time and places as may be agreed upon at a regular meeting of the board of directors of said company.

SEC. 5. When the sum of one hundred thousand dollars has been subscribed, the said company shall notify said subscribers of stock that they shall, on a day to be named, proceed to elect five directors for said company.

SEC. 6. Said stockholders may vote by proxy.

SEC. 7. When said directors shall be elected they shall hold their office for one year and until their successors are elected, and shall take possession of and control the property and assets of said company, and shall have generally all such powers and privileges as may be necessary to carry on the business of said company, and to make such by-laws for that purpose as may be needful within the purport and meaning of this act.

SEC. 8. This act shall take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT to incorporate the Grasshopper Bed Rock Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That P. S. McKovin, J. W. Ripper, John Vipond and Wm. Cook, and their heirs and assigns, are hereby created a body politic and corporate, by the name and style of the Grasshopper Bed Rock Ditch Company, and by that name they and their assigns shall have ten years succession, may contract, sue and be sued, plead and be impleaded, in all courts, and may purchase, hold, lease, sell and convey any estate and property, either real, personal or mixed, for the purpose of said company.

SEC. 2. The capital stock of said company may be one hundred thousand dollars, which may be increased by the board of directors to any sum not exceeding five hundred thousand dollars, and divided into shares of one hundred dollars each, which shall be personal property; certificates of said stock may be issued by the directors

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or a majority of them, and said certificates shall be transferable by endorsement.

SEC. 3. The powers of said company shall be vested in and exercised by a board of directors, who shall be stockholders therein, but until the first election the corporators herein named shall be the directors, and they shall continue until their successors are duly elected, and any vacancy occurring in said board by death, resignation, refusal or inability, or by a director ceasing to be a stockholder, by a transfer of his stock or otherwise, shall be filled by the remaining members of said board, and the said board may adopt by-laws for the conducting and regulating the affairs and business of said company and the appointment of such officers or agents as may be necessary, not inconsistent with the laws of this Territory or of the United States, and they may make, execute and acknowledge all deeds and other instruments of writing required to be made in the course of the business of said company.

SEC. 4. The said company shall have power to construct a bed rock drain ditch from a point known as the lower line of the Independent Mining District, and extending to the upper end of the Bannack Mining District or any intermediate points on said creek. Said company shall have the right of way through the mining claims on said creek, not to exceed six feet wide, to construct said ditch, having first obtained the consent of two-thirds of the claim owners between any points they may be constructing said ditch, and at any time when said company shall have constructed a good and sufficient drain ditch through any of the said claims the owners thereof may tender to the said company a deed for the undivided one half interest in the claim or claims so owned by him, or he shall be assessed by three disinterested persons (to be agreed upon by himself and the directors) to pay his proportion of the cost of constructing said drain ditch: *Provided*, That no previous written agreement shall have been made between said company and the claim owner, in which case the tenor of said agreement shall be fully observed.

SEC. 5. On the first Monday of April annually, between the hours of two in the forenoon and three in the afternoon, at such place as the board may appoint, an election for three directors shall be held to serve for the ensuing year and until their successors are duly elected; all elections shall be by ballot, every stockholder

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being entitled to one vote, in person or by proxy, for each share of said stock owned by him, and the person receiving the largest number of votes shall be declared duly elected if qualified.

SEC. 6. Said company shall commence the said work within thirty days after the passage of this act, and prosecute the said work as fast as practicable.

SEC. 7. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 8, 1865.]

AN ACT to incorporate the Montana Excelsior Gold and Silver Mining Company.

Be it enacted by the Legislative Assembly of the Territor of Montana:

SEC. 1. For the purpose of developing the gold, silver, and other resources of the country, and encouraging the mining interests in Montana Territory, Christian Mead, John B. Miller, Amos L. Cronse, and Homer R. Payne of Bannack City, Montana Territory, John H. White and Matthias J. Miller of Albion, Orleans county, State of New York, Sanford E. Church, New York, Burton C. Cook, Illinois, Michael Roan of Massachusetts, and such other persons as may hereafter become associated with them, be, and they are hereby, constituted a body politic and corporate, under the name and style of the Montana Excelsior Gold and Silver Mining Company, and by and under such corporate name and capacity may sue and be sued, plead and be impleaded in any of the courts of law and equity in this Territory.

SEC. 2. Said corporation may have and use a common seal, and alter the same at pleasure; and shall be capable of holding, using, and conveying any estate, real and personal, necessary for the use of said corporation.

SEC. 3. The capital stock of said company or corporation shall be two hundred and seventy-five thousand dollars, with the privilege of increasing the same at any time the directors shall see fit to six hundred thousand dollars; and at any time when said company shall have expended one hundred thousand dollars in working

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mines in this Territory, or in erecting mills, furnaces, or other fixtures for working said mines, the directors of said company shall have power to increase the capital stock to two million dollars; and said stock shall be divided into shares of one hundred dollars each.

SEC. 4. The stock, property, estate, and concerns of said company shall be managed by five directors. Said directors shall hold their office for the term of one year, and until their successors are elected, of whom three shall be a quorum for transacting business. *Provided, however*, No failure to elect officers shall dissolve the corporation, but the acting directors shall continue in office until the next annual election.

SEC. 5. All elections shall be by ballot. Each share shall be entitled to one vote, and votes may be given in person or by proxy.

SEC. 6. The first election for directors shall be held under the direction of the said incorporators, or any three of them.

SEC. 7. The directors chosen under this act shall immediately elect, out of the persons named in the act of incorporation, a president, secretary, and treasurer; and if any vacancy occur, either of president or any of the officers or directors, the remaining directors shall appoint from amongst the stockholders suitable persons to fill such vacancies for the remainder of the term for which such directors were elected.

SEC. 8. Said company shall have power to construct railroads, drive tunnels, sink shafts, necessary for mining purposes, and erect mills, furnaces, and all necessary buildings, stables, &c.

SEC. 9. This company shall have power to establish offices in Bannack City, or at any place within the limits of Montana Territory, and at New York city, Boston, Philadelphia, and Albion, for the transaction of their business, if necessary.

SEC. 10. The board of directors, or a quorum thereof, shall have power to form such by-laws and ordinances as shall from time to time seem to them to be needful and proper, and to alter and amend the same at their pleasure, in accordance with the Constitution of the United States and laws of this Territory.

SEC. 11. The governor and legislative assembly of this Territory reserve the power to modify and amend this charter at any time should any of its provisions be violated by such company or corporation.

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SEC. 12. This act shall take effect and be in force from and after its passage.

[Approved February 8, 1865.]

AN ACT to incorporate the Beaver Head and Big Hole Bridge Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Jean Batiste Lorain, Toussaint Kensler, and their legal associates and successors, be, and they are hereby incorporated as a body corporate and politic, to continue for the term of ten years, by the name and style of the Beaver Head and Big Hole Bridge Company, and by that name shall be capable of making contracts, of suing and being sued, impleading and being impleaded, in all matters whatever in all courts of law or equity in this Territory; and may have and use a common seal, which may be altered at pleasure.

SEC. 2. That said company shall have the exclusive privilege for the time mentioned in the previous section to construct, erect, and maintain two bridges over the stream or streams of water designated in section four, and shall complete them within nine months after the passage of this act, and if not this charter shall become forfeited.

SEC. 3. That said company shall have the power to make and afterwards to alter all needed rules and regulations for the government of said company, or the management of said bridges, or either of them, to be constructed by said company, not conflicting with the laws of this Territory.

SEC. 4. That said company shall have the power for the time prescribed in this charter, to collect toll, as hereinafter mentioned, from all persons travelling upon and over the bridge to be erected and built by them over the stream known as the Big Hole River at or near the crossing of said river of the road leading from Virginia City to the town of Deer Lodge, in this Territory, and the bridge to be erected and built by them over Beaver Head creek, at or near the crossing of the same of the road aforementioned, with wagons,

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vehicles of every sort, with horses, mules, asses, cattle, hogs, and sheep. Any person who shall refuse to pay toll required by this act shall forfeit and pay the sum of ten dollars for each refusal, to be recovered by an action at law by said corporation.

SEC. 5. Said company shall build and keep in good repair the road westerly from said bridge, for a distance of ten miles, during the time they shall collect toll on said bridge, and said road shall be and is hereby declared a free road.

SEC. 6. That said company may erect and maintain a toll gate upon the bridge over Big Hole River, at which toll gate there may be collected for said bridge the following tolls, and no more to wit: For each wagon or vehicle drawn by one span of horses, mules or cattle, five dollars; for each vehicle drawn by one horse, mule, or other animal, two dollars; for each additional span of horses, mules, or other animals, one dollar; for each riding horse or mule, one dollar; for horses, mules, cattle, and asses driven loose, the sum per head of fifty cents; for hogs and sheep, the sum per head of twenty-five cents. Nothing in this act shall be so construed as to allow said corporation to collect tolls for travelling upon and over the bridge to be built by them over Beaver Head creek, but the same when so built is hereby declared to be a free bridge, and to be kept in repair by said company for the public convenience.

SEC. 7. No person or corporation shall be allowed to construct or build any bridge to the damage of the corporators mentioned in this act within five miles of said bridge, or either of them, on either side thereof; but this section shall not be so construed as to prevent any former rancheman from constructing a bridge over either Big Hole River or Beaver Head Creek for his own convenience; but any person constructing any such private bridge shall not collect toll.

SEC. No section or part of this act shall be so construed as to prohibit the county commissioners from exercising the same authority over said bridge as they are authorized to exercise over other licensed bridges, and they may, after the expiration of three years from the passage of this act, upon the petition of fifty bona fide citizens of the county in which such bridge is located, alter and fix the rates of toll.

SEC. 9. This act shall be in force from and after its passage.

[Approved January 9, 1865.]

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AN ACT to incorporate the Norwegian Gulch Ditch Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That Martin G. Taylor, Joseph H. Taylor, Daniel B. Rice, William D. Mitchell, Edward Hotchkins, Robert P. Williams, and Ward W. Hotchkins, with their associates and successors, be and they are hereby constituted a body corporate and politic, for the term of fifty years, by the name and style of the Norwegian Gulch Ditch Mining Company, and by that name shall be capable of suing and being sued, defending and being defended in all courts and places, and in all manner of actions, causes and complaints whatsoever, may have a common seal which they may use and alter at pleasure, and by their corporate name may purchase, hold and convey property real and personal, may make all necessary contracts for carrying on the business of the company, and do all other acts necessary and expedient in the progressive stages and operations of the company, not inconsistent with the laws of the United States or of this Territory.

SEC. 2. The capital stock of said company shall not exceed one hundred thousand dollars, the stock to be divided into shares of one hundred dollars each, and transferable on the books of the company in such a manner as the by-laws shall ordain, but no transfer shall be valid until it shall have been registered in the books of the company kept for that purpose.

SEC. 3. At all meetings of the stockholders each share of stock actually paid in shall be entitled to one vote, either in person or by proxy in writing, and a majority of voters present shall determine all questions submitted to the stockholders.

SEC. 4. The aforesaid company shall have the right and privilege, and the same are hereby conferred, to take out the waters of South Willow creek at or near the canon near the head of said creek, and to conduct the same over the range to Spring gulch, thence through Spring gulch into and through Norwegian gulch, along said route as far as it may be necessary or expedient to water and irrigate lands, or for sluicing and milling purposes in both of said gulches.

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SEC. 5. The company shall have the entire control and management of all the waters thus taken out, and may use the same for the irrigation of lands, for mills or machinery of any kind, for sluicing, and for all other lawful purposes whatever, may sell, lease, and dispose of the same, or any portion thereof, for any or all the above purposes, on such terms and conditions as the parties may agree.

SEC. 6. The company shall also have the right and privilege to sell and dispose of stock in shares of one hundred dollars each and in half shares of fifty dollars, to enable the company to prosecute the work, and to make such improvements with the same as may be deemed of advantage or profit, and the stock sold shall not exceed one hundred thousand dollars.

SEC. 7. The officers of said company shall consist of a president, secretary and treasurer, and the same shall constitute a board of directors or managers; their term of office shall be two years from the date of their election and until their successors are elected and qualified. They shall take the oath of office to faithfully discharge the duties of their offices, and shall file bonds with approved security in the office of the clerk of the district court of the county of Madison, and shall annually, on the first Monday in May, present to the stockholders a just, true and accurate balance sheet, showing the receipts and expenditures of money and property, with a clear and explicit statement of the entire financial condition, circumstances and standing of the company in a plain legible style.

SEC. 8. Whenever a vacancy occurs in the board of managers or directors by death, inability, removal from the Territory, or resignation, the remaining members of the board may fill such vacancy by appointment until the next May succeeding, and on the first Monday in said month that vacancy may be filled by an election of the votes of said company.

SEC. 9. The board of managers or directors are hereby authorized and empowered to make and ordain all necessary by-laws and regulations for the internal policy of the company, and to carry out the spirit and design of this charter in good faith and virtue: *Provided*, That none conflict with the Constitution of the United States or the laws of this Territory.

SEC. 10. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 9, 1865.]

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AN ACT to incorporate the Montreal Town Company.

Be it enacted by the Legislative Assembly of the Territor of Montana:

SEC. 1. That John Frazer, James Reed, their associates, successors and assigns, are hereby constituted a body politic and corporate by the name and style of the Montreal Town Company, and by that name may sue and be sued, plead and be impleaded, in all courts of law and equity in this Territory, having jurisdiction in such cases. Said company is authorized to have and use a common seal, and to alter the same at pleasure, and to make rules and regulations for their government not incompatible with the laws of the United States, or of this Territory, and to appoint or elect such officers and agents for the transaction and management of the business of said company as the stockholders may deem necessary.

SEC. 2. That the said company shall have power to hold, manage and control, the land now occupied and owned by them as hereinafter described, to wit: beginning at a point on Stinking Water river, about four hundred yards above the house now occupied by Lorain and Gunn as a hotel, thence running easterly eight hundred and eighty yards, thence northerly eight hundred and eighty yards, thence westerly to a point on Stinking Water river, thence up said river to the point of beginning, and will embrace one hundred and sixty acres of land; and may cause the same to be surveyed and erected into a town, to be known as Montreal; and may sell and transfer any portion thereof, for the use and benefit of said company and in such manner and on such terms as the stockholders may think proper.

SEC. 3. That said company shall have power to make additions to the present town tract as they may deem consistent, not intruding or infringing on the rights or prior possessions of any other occupants.

SEC. 4. This act to be in force and take effect from and after its passage and approval by the governor.

[Approved February 9, 1865.]

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AN ACT to dissolve the bonds of matrimony heretofore existing between James R. Bigelow and Maria W. Bigelow.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony heretofore existing between James R. Bigelow and Maria W. Bigelow, be and they are hereby dissolved.

SEC. 2. This act shall take effect and be in force from and after its approval by the governor.

[Approved February 9, 1865.]

AN ACT to compensate Robert Hereford for services rendered the Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the sum of two hundred dollars be and is hereby appropiated out of any moneys in the territorial treasury not otherwise appropriated, to compensate Robert Hereford for services rendered the people of said Territory, in the trial and execution of George Ives.

SEC. 2. The territorial auditor is hereby directed to draw his warrant for said sum, in favor of Robert Hereford.

SEC. 3. This act to take effect and be in force from and after its approval by the governor.

[Approved February 9, 1865.]

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AN ACT to incorporate the Gallatin Ferry Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That J. S. Wilson, James Galliher, and G. W. Hill are hereby constituted and created a body corporate and politic, to be known as the Gallatin Ferry Company, and by that name and style may sue and be sued, plead and be impleaded in all courts of law or equity in this Territory, may make contracts, have and use a common seal, which they may alter at pleasure.

SEC. 2. Said company shall have the exclusive right and privilege of building, maintaining, and running a ferry-boat on the Missouri River, at a point they may select, within two miles of the town of Gallatin, either above or below.

SEC. 3. Said company shall have the term of one year in which to complete said ferry-boat, and after the expiration of that time shall keep and maintain a good and safe ferry-boat on said river, and shall enjoy the rights and privileges herein granted for the term of eight years from the passage of this act.

SEC. 4. Said company shall have the right to tax and collect the following rates of toll: For each wagon or vehicle drawn by one span of animals, five dollars; for each additional span of animals, one dollar; for horsemen, one dollar; for all loose stock per head, twenty-five cents; for footmen, twenty-five cents.

SEC. 5. That no part of this act shall be so construed as to prevent the county commissioners from fixing the rates of toll on said ferry after the expiration of three years from the passage of this act.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

[Approved February 9, 1865.]

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AN ACT to provide compensation for Harry Burns for preparing the civil and criminal codes adopted by the Legislative Assembly of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. There shall be and is hereby appropriated out of the territorial treasury, the sum of four hundred dollars, to be paid to Harry Burns, for the civil and criminal codes, prepared by him for the use of the Legislative Assembly of the Territory of Montana, and adopted by it.

SEC. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer for the sum named in section one of this act, in favor of Harry Burns, to be paid out of any money not otherwise appropriated.

SEC. 3. This act to take effect from and after its passage and approval by the governor.

[Approved February 9, 1865.]

AN ACT to incorporate the California Mining Company of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That William P. Wheeler, Robert Johnson, N. Howie, W. Scofield, Thomas Robinson and George Ralf, their associates and successors, be and they are hereby constituted a body politic and corporate, by the name and style of the California Gold and Silver Quartz Mining Company of Montana, and by that name may sue and be sued in all courts in this Territory, and may have and use a common seal, and may make such regulations and by-laws for their government, not in conflict with the laws of the United States or of this Territory, as they may think proper, and may elect a president, secretary and a board of directors, whose duty may be defined by the by-laws of the company.

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SEC. 2. That said company may acquire by purchase or fee simple lode claims of gold and silver, mill sites and water privileges, and may hold the same in the manner prescribed by law, and may erect and maintain mills, arastras, and any other machinery, property or houses necessary to work said mining claims, and may prosecute the business of quartz mining in all its branches.

SEC. 3. The capital stock of said company shall be one hundred thousand dollars, which may be increased to one million dollars.

SEC. 4. Said company may borrow money, and secure the same by mortgage on the property of the company.

SEC. 5. This act shall take effect and be in force from and after its approval by the governor.

[Approved February 9, 1865.]

AN ACT to amend an act entitled an act granting to Franklin Ruff, James Hiestler and Antoine Primeau, the right to have and maintain a ferry or bridge across the Jefferson River on the road from Virginia City to Fort Benton and Prickly Pear, approved January 13, 1865.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That section one of said act be and is hereby amended so as to read five instead of eight, as it is after the word "of" and before the word "miles" in said section.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved February 9, 1865.]

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AN ACT to dissolve the bonds of Matrimony existing between Peter Greenish and Mrs. E. Greenish.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony existing between Peter Greenish and Mrs. E. Greenish, his wife, be and the same are hereby dissolved.

SEC. 2. This act shall take effect and be in force from and after its passage and approval by the governor.

[Approved February 9, 1865.]

AN ACT to incorporate the Jefferson Bridge Company.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That John Metze, Charles Hiurman, Robert Klary and John Rohebaker, and their legal associates, successors and assigns are hereby constituted a body politic and corporate, by the name and style of the Jefferson Bridge Company, and by that name and style shall be capable of making contracts, of suing and being sued, impleading and being impleaded in all courts of law and equity in this Territory, and may have and use a common seal, which may be altered at pleasure.

SEC. 2. The exclusive right to erect and maintain a bridge across the waters of Jefferson River at any and every point one mile above and one mile below where said company are now building said bridge in this Territory, is hereby granted to said Metze and company for a period and term of three years from and after the passage of this act, with the privileges and subject to the conditions prescribed in this act.

SEC. 3. So long, not exceeding three years, as the said company or their associates or successors shall maintain a safe and suf-

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ficient bridge between the points aforesaid, they shall be authorized to charge, demand, and collect the following rates of toll, namely: For a wagon drawn by two animals, four dollars; for each additional two animals, one dollar; for each pack animal, fifty cents; for each horseman, fifty cents; all footmen, free; for all loose stock, twenty-five cents.

SEC. 4. Upon the acceptation of their franchise, the said company, and their associates and successors, shall be held and obligated to keep said bridge in a good, safe and sufficient condition for use both night and day.

SEC. 5. The county commissioners shall have power to regulate the foregoing toll rates after the expiration of two years, upon the petition of fifty bona fide citizens of the Territory, as in their judgment shall best subserve the interests of the public.

SEC. 6. This act to take effect and be in force from and after its passage.

[Approved February 9, 1865.]

AN ACT to dissolve the Bonds of Matrimony existing between Henry D. Moyer and Abigail Moyer.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony existing between Henry D. Moyer and Abigail Moyer, his wife, be, and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage and approval by the governor.

[Approved February 9, 1865.]

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AN ACT granting compensation to C. H. Sackett.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the Territorial auditor is hereby instructed and authorized to issue to C. H. Sackett the sum of forty-eight dollars in Territorial warrants, as compensation for four days service rendered by him to the enrolling clerk of the House.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved February 9, 1865.]

AN ACT to incorporate the City of Nevada.

Be it enacted by the Legislative Assembly of the Territory of Montana:

ARTICLE I.

OF BOUNDARIES.

SEC. 1. That the inhabitants of the city of Nevada, in Madison county, and Territory of Montana, be, and are hereby constituted a body corporate and politic, by the name and style of the City of Nevada, and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded in all courts of law and equity, and may have and use a common seal, and alter the same at pleasure.

SEC. 2. All of the territory embraced within the following limits, to wit: commencing at a point four hundred feet west of W. R. Lockwood's house in Central City; thence south one-half mile; thence west one and three-fourths of a mile; thence north one mile; thence east one and three-fourths of a mile; thence

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south to the place of beginning, shall be, and the same shall constitute the limits of the city.

SEC. 3. That all vacant or unoccupied lots within the limits of said city, as described in section two, shall be, and the same are hereby declared the property of said city, and shall be held in trust, and disposed of by the city council, or their legally authorized agent or attorney, and all moneys received therefor shall be paid into the city treasury for the use and benefit of said city of Nevada.

SEC. 4. Whenever any tract of land adjoining the city of Nevada shall be laid off into town lots, and recorded as may be required by law, and the owner or owners of said tract of land shall desire to annex the same to said city, he or they shall file a declaration or petition to that effect with the city council, who shall cause a notice of the same to be published, and a vote to be taken at the next ensuing general election, and if a majority of the votes within the limits of the city shall be in favor, the said tract of land shall be declared annexed to said city. under such regulations as may be agreed upon between the owner or owners of said tract of land and the city council.

SEC. 5. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended, in all courts of law and equity, in all actions whatsoever, to purchase, receive, and hold property, real, personal, or mixed, either in or beyond the city limits, for burial grounds, and for other purposes, for the use of the inhabitants of said city.

ARTICLE II.

OF THE CITY COUNCIL.

SEC. 1. That there shall be a city council, to consist of a mayor and board of aldermen.

SEC. 2. The board of aldermen shall consist of two members from each ward, who shall be chosen by the qualified voters, and shall hold office for two years, and until their successors are elected and qualified.

SEC. 3. No person shall be eligible to the office of mayor or alderman unless at the time of his election he shall be a freeholder,

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and have resided within the limits of the city for the six months immediately preceding his election, and shall be a resident of the ward for which he is elected, and a citizen of the United States; and if any alderman shall, after his election, remove from the ward for which he was elected, his office shall be declared vacant.

SEC. 4. That the mayor shall be entitled to receive a salary of one thousand dollars per annum, and such fees as may be allowed to justices of the peace in like cases. Each alderman shall be entitled to receive such amount per diem, not to exceed ten dollars per day, as may be determined by the council, for the time the council are actually in session.

SEC. 5. At the first meeting of the city council the aldermen shall be divided by lots into two classes, the seats of those of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that one-half of the board shall be elected annually.

SEC. 6. The city council shall judge of the qualifications of the members elect, and from the returns shall determine all contested elections under this act.

SEC. 7. A majority of the city council shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance.

SEC. 8. The city council shall have power to determine the rules of its proceedings, punish its members for disorderly conduct, and with the concurrence of two-thirds of the members elected, expel a member.

SEC. 9. The city council shall keep a journal of its proceedings, and the yeas and nays when demanded by any member present shall be entered on the journal.

SEC. 10. No alderman shall be appointed to any office under the authority of the city which shall have been created or the emoluments of which shall have been increased during the time for which he shall have been elected.

SEC. 11. All vacancies that shall occur in the board of aldermen shall be filled by election.

SEC. 12. The mayor and each alderman before entering upon the duties of his office, shall take and subscribe an oath or make an affirmation that they will support the constitution of the United

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States and the organic act of the Territory of Montana, and that they will well and truly perform the duties of their offices to the best of their ability.

SEC. 13. Whenever there shall be a tie in the election of aldermen, the judges of the election shall certify the fact to the mayor, who shall determine the same by lot, in such manner as shall be prescribed by ordinance.

SEC. 14. There shall be twelve stated meetings of the council in each year at such times and place as may be prescribed by the city council.

ARTICLE III.

OF THE EXECUTIVE OFFICER.

SEC. 1. The chief executive officer of the city shall be a mayor, who shall be elected by the qualified voters of the city, and shall hold his office for two years and until his successor is elected and qualified.

SEC. 2. If the mayor, during the term for which he shall have been elected, remove from the city or shall be absent from the city for the space of three months, his office shall be declared vacant.

SEC. 3. When two or more persons shall have an equal number of votes for mayor, the judges of election shall certify the same to the city council, who shall determine the same by lot in such manner as may be provided by ordinance, and when any election is contested the city council shall determine the same in such manner as may be prescribed by ordinance.

SEC. 4. Whenever any vacancy shall occur in the office of mayor it shall be filled by election.

ARTICLE IV.

OF ELECTIONS.

SEC. 1. On the first Monday in April, A. D. 186 , an election shall be held in the said city for one mayor, one justice of the peace, who shall be denominated police magistrates for the city of Nevada, one marshal, one city attorney, one city clerk, one city treasurer, one city assessor, one street commissioner, and two aldermen for

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each ward, who shall serve for two years and until their successors are elected and qualified, except the aldermen, whose term of office shall be as provided in section 5, article 2, of this act.

SEC. 2. All white male inhabitants over the age of twenty-one years who are entitled to vote for members of the Territorial Legislature, and who shall have been actual residents of said city for sixty days next preceding said election, shall be entitled to vote for city officers: *Provided*, That said voters shall give their votes in the ward in which they reside.

ARTICLE V.

POWERS OF CITY COUNCIL.

SEC. 1. The city council, the mayor concurring, shall have power and authority to levy and collect taxes for city purposes upon all taxable property, real, mixed and personal, except as hereinafter exempted, within the limits of the city, not exceeding one half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same in any manner that may be prescribed by ordinance and not incompatible with the constitution of the United States or the organic act of this Territory.

SEC. 2. The city council shall have power to appoint all officers except such as are elected or otherwise provided in this act, and to fix the compensation for the same.

SEC 3. The city council shall have power to require all officers appointed or elected, to give bond with penalty and approved security, and to take and subscribe an oath or make an affirmation as prescribed in section 12, article 2 of this act, for the faithful performance of their respective duties.

SEC 4. The city council shall have power to establish, support and regulate common schools in such manner as may be prescribed by ordinance.

SEC 5. The city council shall have power to borrow money on the credit of the city: *Provided*, That no sum or sums of money shall be borrowed at a greater rate of interest than

nor shall any sum or sums be borrowed as aforesaid, until after the subject shall have been submitted to the legal voters of said city, for which purpose a special election shall be called by the mayor after giving twenty days notice thereof, and if a majority of the

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legal voters of the city shall vote in favor of any such loan the same may be negotiated, but not otherwise, and *provided further*, that the annual interest on all the loans of the city shall at no time exceed one half the revenue annually derived from the tax levied by said city upon the real estate within its limits.

SEC. 6. The city council shall have power to appopriate money and to provide for the payment of the debts and expenses of the city; to pass ordinances of quarantine and make such regulations as they may think proper to prevent the introduction of contagious diseases into the city, and to enforce the same within five miles of the city; to establish hospitals and make regulations for the government of the same, and to make such other regulations as may be deemed necessary for the general health of the inhabitants; to declare what shall be a nuisance and prevent and remove the same.

SEC. 7. To provide the city with water, to erect hydrants and pumps, build cisterns and dig wells in the streets for the supply of engines and buckets.

SEC. 8. To open, alter, abolish, widen, extend, establish, grade or otherwise improve and keep in repair streets, avenues, lanes, and alleys, sidewalks, drains and sewers. *Provided*, That should any private property be injured or damaged thereby, the city shall be held liable and pay to the owner of said property a fair and equitable compensation for the same, and to establish and keep in repair bridges.

SEC. 9. To divide the city into wards, alter the boundaries thereof, and erect additional wards, as occasion may require.

SEC. 10. To establish, support and regulate night watches, and to provide for lighting the streets, and to erect lamp posts.

SEC. 11. To erect market-houses, to establish markets and market places, and to provide for the regulation and government of the same.

SEC. 12. To provide all needful buildings for the use of the city and to provide for enclosing, improving and regulating all public grounds belonging to the city.

SEC. 13. To license, tax and regulate auctioneers, merchants, pedlers, retailers, grocers, taverns, ordinaries, hawkers, brokers, pawn brokers, bankers and money changers, hackney carriages, wagons, carts and drays, and to fix the rates of transportation of both persons and property. To license and regulate porters and

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rates of porterage. To license, tax and regulate theatrical and other exhibitions, shows and amusements.

SEC. 14. To license, tax, regulate and restrain tippling houses, dram shops, gambling houses, dance houses, bawdy houses, and other like establishments, and to suppress the selling or giving away of intoxicating or malt liquors by any person within the city, except by persons duly licensed.

SEC. 15. To provide for the prevention and extinguishment of fires, to organize and establish fire companies, to regulate the erection of wooden buildings, chimneys, flues, &c., and to regulate the storage of gun powder and other combustibles.

SEC. 16. To restrain cattle, hogs, horses, dogs and other animals, from running at large.

SEC. 17. To provide for the inspection and measurement of lumber and other building material, and of stone coal, charcoal, fire wood and other fuel to be sold and used within the city, and for the weighing of hay, and to make such other regulations as may be for the safety and convenience of the inhabitants of said city.

SEC. 18. To provide for and regulate the inspection of tobacco, beef, pork, flour, meal, whiskey in barrels, butter, lard and other produce, and of the weight and quality of bread to be used in the city.

SEC. 19. To provide for taking the enumeration of the inhabitants of the city, and to regulate the election of city officers, and for the removal from office of any person holding an office created by ordinance.

SEC. 20. To fix the compensation of city officers, and fix and regulate the fees of jurors, witnesses and others, for services rendered under this act or any ordinance made in pursuance thereto.

SEC. 21. To regulate the police of the city, to enforce fines, forfeitures and penalties for the breach of any city ordinance, and for the recovery of such fines and forfeitures and the enforcement of such penalties, and all moneys collected under the provisions of this section shall belong to the city and be disposed of by the city council by ordinance for the general use and benefit of the inhabitants thereof.

SEC. 22. The city council shall have power to make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this act. *Provided*, That such ord-

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inance be not inconsistent with the Constitution of the United States or the Organic Act of this Territory.

SEC. 23. The style of the city ordinance shall be—Be it ordained by the City Council of the City of Nevada.

SEC. 24. All ordinances of the city council shall be approved by the mayor, and shall within ten days after approval, be published in some newspaper in the city, or be posted up in three most public places in said city, and shall not be in force until they have been so published or posted.

SEC. 25. All ordinance of the city council may be proved by the seal of the corporation, and when printed in book form or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

ARTICLE VI.

DUTIES OF THE MAYOR.

SEC. 1. The mayor shall preside at all meetings of the city council, and in case of a tie shall have the casting vote, but in no other case shall he be entitled to vote. In case of the non-attendance of the mayor at any meeting, the board of aldermen shall appoint one of their number as chairman, who shall preside at the meeting, but shall not thereby lose his right to vote on any question before the board. The mayor or any two aldermen may call a special meeting of the city council.

SEC. 2. The mayor shall at all times be vigilant and active in enforcing the laws and ordinances for the government of the city. He shall inspect the conduct of all subordinate officers of said city, and shall cause negligence or positive violation of duty to be prosecuted and punished. He shall from time to time communicate to the board of aldermen such information and recommend all such measures as in his opinion may tend to the improvement of the finances, the police, the health, security, comfort and ornament of the city.

SEC. 3. The mayor is hereby authorized to call on every white male inhabitant of said city, over the age of eighteen years, to aid in the enforcing the laws and ordinances, and in case of riot to call out the militia to aid him in suppressing the same, and for securing

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the peace and safety of the city, or in carrying into effect any law or ordinance. And any person who shall refuse to obey such call shall forfeit to the city a fine not exceeding twenty dollars.

SEC. 4. The mayor shall from time to time inspect the books and papers of the different officers of the city and report their condition at some regular meeting to the city council, and he shall have power to enforce all ordinances relating to the health of the city at any place within five miles of the boundaries of the city.

SEC. 5. In case the mayor shall at any time be guilty of a palpable omission of duty or shall wilfully or corruptly be guilty of oppressive mal-conduct or partiality in the discharge of the duties of his office, he shall be liable to be indicted in the district court of the proper county, and on conviction he shall be fined not more than five hundred dollars, and the court may on the recommendation of the jury, order his removal from office.

ARTICLE VII.

STREETS AND PUBLIC WAYS.

SEC. 1. When it shall be necessary to take possession of, or in any manner injure private property for the purpose of opening, widening or altering any street, avenue, lane or alley, the corporation shall pay a just compensation to the owners of said property for all such property taken or injury inflicted; and if the street commissioner and the owner of the property fail to agree as to the amount of damages, then the mayor shall cause to be empaneled a jury of six disinterested persons, free holders of the city, who shall inquire into amount of damages and benefits accruing to the owner of said property, and in accordance therewith shall return to the mayor their inquest in writing, and signed by them.

SEC. 2. When the owners of all the property on a street, lane, avenue or alley, proposed to be opened, widened or altered, shall petition therefor, the city council may open, widen or alter such street, lane, avenue or alley upon conditions to be prescribed by ordinance; but no compensation shall in such cases be made to those whose property shall be taken, their tenants or others, nor shall there be any assessment of benefits or damages that may accrue thereby to any of the petitioners.

SEC. 3. The city council shall have power by ordinance, to levy

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and collect a special tax on the holders of lots in any street, lane, avenue or alley, according to their respective fronts, for the purpose of paving, grading or planking sidewalks, and lighting such street, lanes, avenues or alleys. *Provided* said tax shall not exceed the actual cost of said sidewalks and lighting respectively, which tax shall be collected in the same manner as other city taxes.

ARTICLE VIII.

Miscellaneous Provisions.

Sec. 1. The city council shall have power, for the purpose of keeping the streets, lanes, avenues and alleys in repair, to require every able bodied male inhabitant in said city, over the age of twenty-one years, to labor on said streets, lanes, avenues and alleys, not exceeding two days in each year, and every person failing to perform such labor when duly notified by the street commissioner, shall forfeit and pay the sum of ten dollars for each day so neglected and refused.

Sec. 2. The city council shall cause to be published annually, a full and complete statement of all moneys received and disbursed by the corporation during the preceding year, showing on what account received and expended.

Sec. 3. All suits, actions and proceedings instituted or commenced by the corporation shall be prosecuted in the name of the city of Nevada.

Sec. 4. Appeals shall be allowed from decisions in all cases arising under the provisions of this act or any ordinance passed in pursuance thereof to the district court; and all appeals shall be granted in the same manner and with like effect as appeals are taken from and granted by justices of the peace under the laws of this Territory.

Sec. 5. Whenever the mayor's office shall from any cause become vacant, the board of aldermen shall immediately proceed to elect one of their number president, who shall be mayor pro tem. until the office shall be filled by election as hereinbefore provided.

Sec. 6. This act is hereby declared to be a public act, and may be read in evidence in all the courts of law and equity within this Territory without proof.

Sec. 7. The city marshal and the constables within said city of Nevada shall be authorized and have power to execute anywhere

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within the limits of Madison county all process issued by the police magistrate of said city, or any other magistrate within said city, and the marshal shall have power to do all the acts that a constable may lawfully do, and shall receive the same fees that are allowed to constables in similar cases, and shall give bond as constable, as required by law.

SEC. 8. In all prosecutions for any violation of any ordinance, by-law, or other regulation, the first process shall be by summons, unless oath or affirmation shall be made for a warrant, as in other cases.

SEC. 9. Execution may issue immediately after rendition of judgment, and be collected in the manner prescribed by the laws of this Territory for the collection of debts.

SEC. 10. The police magistrate shall have jurisdiction in all cases of violation of the city ordinances, and shall have the same jurisdiction in all civil and criminal proceedings as is now or shall hereafter be conferred upon other justices of the peace of this Territory, and in all courts of this Territory said police magistrate shall be held to be a justice of the peace; but no change of venue shall be allowed from said police magistrate to any other justice of the peace for hearing and determination in any case where proceedings shall be commenced against any person or persons for the violation of any city ordinance.

SEC. 11. The duties of all officers mentioned in this act not herein prescribed shall be fixed and regulated by ordinance.

SEC. 12 That James Williams, N. J. Bond, and William P. Wheeler, be and they are hereby constituted and appointed to act as commissioners for purposes hereinafter mentioned and to serve in such capacity until the first board of aldermen of said city shall be elected and duly qualified; said commissioners or any two of them shall, on or before the 3d day of April, A. D. 1865, proceed to lay out and divide the city of Nevada into three wards and fix the boundaries of the same, and shall also provide for holding the first election herein appointed in the several wards of said city; shall fix the place for holding said election in each of said wards; shall appoint three competent persons to act as judges of election in each of said wards, who shall be sworn, and whose places may be filled in case they do not serve as provided by law in elections for members of the Legislature; a copy of the returns of said election shall be

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delivered to the commissioners who shall canvass the same, and the persons receiving the highest number of votes for the several offices to be filled under the provisions of this act shall be declared by said commissioners or any two of them duly elected to said offices; should it be found that two or more persons have received the same number of votes for either of said offices, the commissioners shall determine the same by lot.

SEC. 13. That this charter be approved for final adoption by a majority of the votes of the people residing within the limits of said city at an election to be held at such time as is provided for in section 13 of article 8 of this act, when the ballot shall either be "for the charter," or "against the charter," and if upon the canvass of the votes cast at said election it shall appear that a majority of the votes cast are for the charter the commissioners shall immediately declare the same to be in full force and effect by a publication for one week in some newspaper in the county, and by posting at least three notices in three most public places in the county, but if the vote be against the charter they shall publish the same as rejected.

[Approved February 9, 1865.]

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JOINT RESOLUTIONS.

JOINT RESOLUTIONS in reference to the War.

WHEREAS, Our country is now distracted by a gigantic civil war, unprecedented in the annals of civilized nations, and in proportion to the magnitude of the present conflict the American Republic has arisen to the dignity and importance of the crisis, with an energy and devotion of national sentiment, and an employment of blood and treasure unapproached in the annals of history; and whereas, it is the special duty and pride of every citizen of our common country to express his devotion to our unbroken nationality; therefore, be it

Resolved, By the Legislative Assembly of the Territory of Montana, That we hereby renew our pledges, ever entertained, of loyalty to the Union, and will ever frown indignantly upon any attempt to alienate one portion of our common country from another; and as in this struggle our appeal to arms may decide the fate of our nationality, and the question of self-government in its present form, we will ever pray for the success of the Union and the restoration of constitutional government in the gauntlet of battle thrown down by the rebels in arms.

Resolved, That loyalty is the highest duty that every citizen owes to his country, and that the interests of humanity, the principle of republican government, and the prosperity of our common country, demand of us an unfeigned expression for the maintenance of the Union at all hazards, and our highest efforts for its preservation, whether by the arts of peace or war.

Resolved, That we recognize the armies of the republic as the conspicuous defenders of our country, and that we hereby tender to

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them our thanks for their splendid services in the field, without distinction, and hold them in grateful remembrance.

Resolved, That while the heart of the nation beats heavily over the undistinguished graves of the gallant dead who have fallen in the cause of a nation's unity, we do by an unfaltering spirit cheer our brave soldiers in the field on to the contest that still awaits them, with the prayer upon our lips that justice, freedom, and nationality may triumph in the end.

[Approved February 2, 1865.]

JOINT RESOLUTIONS relating to the Codification of the Laws and Journals of the first Legislative Assembly of the Territory of Montana.

Be it resolved by the Legislative Assembly of the Territory of Montana:

1. That William H. Miller, Wilbur F. Saunders, and G. W. Stapleton are hereby constituted, empowered and appointed commissioners in and for said Territory to codify all laws, resolutions and memorials passed at the first session of said assembly of the Territory, which shall have been passed by both Houses and approved by the governor.

2. The said commissioners shall arrange said laws and journals in a suitable and proper form for publication, making correct punctuations, with grammatical constructions of good orthography, in the copies of said laws and journals mentioned as they shall deem necessary to complete the same, and shall make and perfect in a suitable and proper manner an index to said laws and journals.

3. The said commissioners shall have the power, and they are hereby authorized to employ two persons as clerks or assistants for the purpose of aiding and assisting said commissioners in said labors of codification, and shall have power to discharge such clerks or assistants at pleasure. And it shall be the duty of said commissioners to report said copies of said laws and journals when so codified by them to the next session of the legislative assembly of said Territory of Montana.

[Approved February 6, 1865.]

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JOINT RESOLUTION relating to the repeal of the Laws of Idaho which are of a general nature, passed at its first session at Lewiston, in said Territory of Idaho.

Resolved, That all acts or parts of acts, laws or parts of laws, or resolutions of a general nature, which did apply to this portion of said Territory of Idaho before the organization of Montana Territory, under act of organization passed by Congress the twenty-sixth day of May, A. D. 1864, dividing said Territory of Idaho, setting off said Montana Territory from said Idaho, defining the duties of the executive, legislative and judicial departments of said temporary government of Montana Territory, are hereby declared by this legislative assembly repealed, and they are hereby repealed, void, and of no effect in said Territory of Montana.

[Approved February 9, 1865.]

JOINT RESOLUTION in reference to holding terms of Court in the Second Judicial District.

Resolved by the Council, the House of Representatives concurring:

That the regular terms of court for the second judicial district shall commence as follows: In Beaver Head county on the second Mondays of June and September, and in Deer Lodge county on the third Monday in July, and that Missoula county be attached to Deer Lodge for judicial purposes.

[Approved February 9, 1865.]

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JOINT RESOLUTION in reference to holding terms of courts in the Third Judicial District.

Resolved by the Council, the House of Representatives concurring:

That the regular terms of court in the third judicial district be held as follows: In Jefferson county, at the county seat, the third Monday in September, and that all other counties in that district be attached to Jefferson county for judicial purposes.

[Approved February 9, 1865.]

JOINT RESOLUTION in relation to the Territorial Seal.

Resolved by the Council, the House of Representatives concurring:

That the Territorial seal shall, as a central group, represent a plow, a miner's pick and shovel; upon the right a representation of the Great Falls of the Missouri; upon the left mountain scenery; and underneath, as a motto, the words *Oro y Plata.* The seal shall be two inches in diameter and surrounded by these words — *The Seal of the Territory of Montana.*

[Approved February 9, 1865.]

JOINT RESOLUTION on the Pay and Mileage of Officers and Members.

Resolved by the Legislative Assembly of the Territory of Montana:

That the Territorial auditor be instructed to issue his warrants to members, clerks and attaches of the legislative assembly, according to the report of the joint committee upon pay and mileage.

[Approved February 9, 1865.]

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MEMORIALS.

MEMORIAL for a Weekly Mail Route from Virginia City, Montana Territory, by way of Silver Bow and Deer Lodge to Hell Gate, and from thence to Fort Owen and Willow Creek, and also to Jocko; and that weekly service be put on the route already established between Salt Lake and Fort Benton, and that the same may be by the way of Boulder City, Beavertown, Jefferson City, Helena and Silver City.

To the Honorable the Postmaster General of the United States:

Your Memorialists, the Legislative Assembly of the Territory of Montana, would respectfully represent, that the people now living in the western and northern portion of this Territory, are laboring under great inconvenience and expense, from the fact of there being no mail facilities to the northward and westward from Virginia City, Montana Territory.

The great extent and richness of the silver and gold bearing quartz lodes, as well as the extent and richness of the placer diggings, already discovered in Deer Lodge and Prickly Pear valleys, together with the unequalled grazing and farming lands in Deer Lodge, Hell Gate, Bitter Root, Jocko and Prickly Pear valleys, have invited and received a large number of worthy and industrious inhabitants, and justifies the belief that there will be many thousand permanent settlers engaged in farming, mining and cattle raising in that portion of our Territory.

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In view of these facts, your memorialists would pray that a weekly mail route be established between Virginia City, Montana Territory, Silver Bow, Deer Lodge and Hell Gate, and from Hell Gate to Fort Owen and Willow Creek, and from Hell Gate to Jocko. And your memorialists would also pray, that weekly service be put on the route established between Salt Lake and Fort Benton, and that the same may be by the way of Boulder, Beavertown, Jefferson City, Helena and Silver City; and that a post office be established at each of the places herein mentioned. And your memorialists, as in duty bound, will ever pray.

GEORGE DETWILER,
Speaker of the House of Representatives.

R. LAWRENCE, *President of Council.*

JOINT RESOLUTION AND MEMORIAL in relation to the Compensation of Officers of the Territory of Montana.

To the Honorable Senate and House of Representatives of the United States of America, in Congress assembled:

Your Memorialists, the Council and House of Representatives of the Territory of Montana, most respectfully represent, that

WHEREAS, the Organic Act of this Territory provides that the pay per diem of the members of the first and subsequent legislative assemblies, should be four dollars, during their attendance at the session thereof; and the officers of said legislative assemblies, together with all the territorial officers, are allowed a compensation in like proportion; and whereas, on account of the great distance from the manufacturing and producing sections from whence the inhabitants of this Territory obtain nearly all their necessary articles of consumption, such as provisions, clothing, &c., the cost of such articles is usually three times, and in many cases ten times the cost of similar commodities in the more eastern parts of the United States, and in consequence of such advanced prices, common laborers receive as a usual compensation, from eight to sixteen dollars per day; and whereas, it is manifestly unjust that such a compen-

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sation to members of the legislative assembly or territorial officers should be laid at so low a rate; therefore, your memorialists would respectfully ask your honorable body, so to amend the organic act, as to allow not less than ten dollars per diem for each member and officer in attendance on such first and subsequent legislative assemblies, and an adequate additional amount to the salaries of the governor and territorial judges, not exceeding twenty-five hundred dollars per annum.

Be it resolved by the Council and House of Representatives of the Territory of Montana, That our delegate in Congress be, and is hereby requested to use all honorable means to bring this subject to the favorable consideration of Congress, as early as practicable, and obtain a redress of grievances.

And be it further resolved, That the Secretary of this Territory be requested to transmit a copy of the foregoing memorial and resolutions to our delegate in Congress.

GEORGE DETWILER,
Speaker of the House of Representatives.

R. LAWRENCE, *President of Council.*

MEMORIAL praying for the establishment of a mail route from Omaha, Sioux City, or some point on the Missouri river between said places, to Bannack City, Montana Territory.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the Council and House of Representatives of the Territory of Montana, would most earnestly represent to your honorable body the great inconvenience the people of this Territory suffer for the want of proper mail facilities.

The only mail communication with the east is via Salt Lake City, over a route nearly seventeen hundred miles, crossing the Rocky Mountains twice, which, of itself, produces great irregularities, causing great difficulty in all business transactions with the east.

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We would respectfully represent that there is a company already organized in this Territory for the purpose of constructing a wagon road and telegraph line from Bannack City, via Montana, Junction City, Nevada City, Virginia City, Bozemantown, Emigrant Gulch, and other towns and villages in this Territory, to some point on the Missouri river, at or between Sioux City and Omaha. And your memorialists most earnestly pray that a daily mail may be established over said route, and a sufficient military force, which can be easily raised in this Territory, be stationed along said route, to protect the same. And we would most respectfully represent that the establishment of this route would save to the government the expense of transporting the mail matter for this Territory, the State of Oregon, and the Territories of Washington and Idaho, a distance of nearly or quite eight hundred miles, and give the advantage of two overland routes across the continent instead of one, and be of immense benefit to the people of the far northwest States and Territories.

Your memorialists would also represent that there is now existing in the postal laws an unjust provision in regard to the transmission of newspapers and other printed matter to these interior Territories, amounting to almost a prohibition; and we ask of your honorable body a repeal or amendment of said act or provision, so that all mail matter may be transmitted to us on terms of equality with all other portions of our country.

Your memorialists would humbly urge upon your honorable body immediate action upon the subject set forth in this memorial, as a measure of the greatest importance to the development of the immense mineral and agricultural resources of this country.

As in duty bound will ever pray.

GEORGE DETWILER,
Speaker of the House of Representatives.

R. LAWRENCE, *President of the Council.*

[Approved January 16, 1865.]

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MEMORIAL and JOINT RESOLUTION relative to a proposed treaty with the Snake and Crow Indians.

To the Honorable Secretary of the Interior:

Your memorialists, the Legislative Assembly of the Territory of Montana, would respectively represent that the interests of this Territory would be greatly promoted, and its early settlement hastened, if the Indian title to the country now claimed and occupied by the Snake and Crow Indians were extinguished.

Only a small fragment of land embraced within the boundaries of this Territory is open for settlement. These Indians now possess an area of land embracing all the waters of the Missouri river south of latitude forty-seven degrees north. This region abounds in mineral wealth, and a large portion of it is suitable for agricultural purposes.

Your memorialists entreat your prompt attention to the subject, confidently believing that the interests of the general government and the people of Montana will be greatly subserved by an early treaty with those Indians. And your memorialists will ever pray.

Be it resolved by the Council and House of Representatives of the Territory of Montana, that our delegate in Congress be and is hereby requested to use all honorable means to bring this subject to the favorable consideration of the Interior Department.

GEORGE DETWILER,
Speaker of the House of Representatives.

R. LAWRENCE, *President of the Council.*

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